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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

EMILY SEARS, NAJOME COLON a/k/a GIA
MACOOL, RACHEL BERNSTEIN a/k/a
RACHEL KOREN, LUCY PINDER, and
MARIANA DAVALOS

Plaintiffs,
vs.

RUSSELL ROAD FOOD AND BEVERAGE,
LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB; RUSSO FOODS,
LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB; and SN
INVESTMENT PROPERTIES, LLC d/b/a
CRAZY HORSE III GENTLEMEN'S CLUB

Defendants.

Case No. _____

COMPLAINT

(Jury Trial Demanded)

COME NOW Plaintiffs EMILY SEARS, NAJOME COLON a/k/a GIA MACOOL,
RACHEL BERNSTEIN a/k/a RACHEL KOREN, LUCY PINDER, and MARIANA DAVALOS
(collectively, "Plaintiffs" or "Models"), by and through undersigned counsel, and for Complaint
against Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE
III GENTLEMEN'S CLUB; RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN'S

1 CLUB; and SN INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III
2 GENTLEMEN'S CLUB ("Defendants" or "Crazy Horse") respectfully allege as follows:

3 **BACKGROUND**

4 1. The following is an action for damages and injunctive relief relating to
5 Defendants' misappropriation and unauthorized publication of the image and likeness of Plaintiff
6 Models, who are professional models, in order to promote their strip club, Crazy Horse III
7 Gentlemen's Club ("Crazy Horse" or, the "Defendant").

8 2. As detailed below, Defendants' unauthorized use of Plaintiff Models' images,
9 photos, and likenesses (collectively, "Image") constitutes, at minimum: a) violation of section 43
10 of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A) and (B), which prohibits false or misleading use
11 of a person's image for purposes of advertising; and b) violation of Nevada's Right of Publicity
12 statute, NRS 597.810, which protects a person's right to privacy and publicity.

13 3. Defendants have pirated the images, likeness, and/or identity of each Plaintiff
14 Model for purely self-serving commercial purposes – to advertise, promote, and market
15 Defendants' own business interests on websites and social media accounts owned, operated,
16 hosted, or controlled by Defendants.

17 4. Defendants are unapologetic, chronic, and habitual infringers.

18 5. Defendants never sought consent or authority to use any of the Plaintiffs' images
19 for any purpose.

20 6. No Plaintiff ever agreed, nor would any Plaintiff have agreed, to Defendants' use
21 of her image, likeness, and/or identity.

22 7. Had each Plaintiff been afforded the opportunity to consider whether to consent
23 and release rights as to the use of any image, each Plaintiff would have promptly and
24 unequivocally declined.

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1 8. Defendants' conduct is therefore misleading and deceptive by falsely and
2 fraudulently representing that each Plaintiff Model depicted in the misappropriated images is
3 somehow affiliated with Defendants; has contracted to perform at and/or participate in events at
4 Crazy Horse; has been hired to promote, advertise, market or endorse their events and other
5 activities offered at Crazy Horse; and/or that each Plaintiff depicted in the promotional materials
6 and social media and/or Internet posts has attended or will attend each event and has participated
7 in or intends to participate in the activities advertised.

9 9. Defendants' conduct is also injurious to each Plaintiff Model.

10 10. Defendants circumvented the typical arms-length negotiation process entirely and
11 intentionally pirated the images. In doing so, Defendants have utterly deprived each Plaintiff the
12 right and ability to say "no."

13 11. Defendants have prevented each Plaintiff from engaging in arms-length
14 negotiations regarding the terms and conditions of use of their images, including the term of any
15 release, remuneration per image or use, or the ability to decline the business opportunity entirely.
16 In short, Defendants deprived each Plaintiff the ability to protect her image, brand, and
17 reputation.

18 12. In the end, Defendants gained an economic windfall by using the images of
19 professional and successful models for Defendants' own commercial purposes, luring and
20 enticing patrons worldwide to view the images and visit Crazy Horse, without having to
21 compensate the models for such usage. Plaintiffs, however, sustained injury to their images,
22 brands, and marketability by sheer affiliation with Crazy Horse, a strip club operated by
23 Defendants.

24 13. Having operated a business in the strip club industry, Defendants are well aware
25 of the standard negotiation process over terms of use, conditions of release, licensing issues, and
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1 other contractual incidences related to use and exploitation of images for Defendants'
2 commercial benefit.

3 14. Much more than merely a misuse in connection with an innocuous brand or event,
4 Defendants embarrassed Plaintiffs by associating their images with Crazy Horse.

5 15. In addition to the actual, punitive, and exemplary damages set forth below,
6 Plaintiff Models likewise seek an Order from this Court permanently enjoining Defendants from
7 using the images, likeness, and/or identity of each Plaintiff Model to promote Crazy Horse, via
8 any medium.
9

10 **JURISDICTION AND VENUE**

11 16. This Court has original federal question jurisdiction over the claims in this action
12 pursuant to 28 U.S.C. § 1331 as Plaintiffs have each individually stated claims under the Lanham
13 Act, 15 U.S.C. § 1125(a)(1)(A)–(B). This Court has supplemental jurisdiction over the Nevada
14 state law claims alleged herein pursuant to 28 U.S.C. § 1367.
15

16 17. The Court has personal jurisdiction over Defendants based on their contact with
17 the State of Nevada, including but not limited to Defendants' registration to conduct business in
18 Nevada, their physical location and principal place of business in Nevada, and upon information
19 and belief, Defendants committed, facilitated, assisted, encouraged or conspired to commit the
20 actions giving rise to the harm and damages alleged herein in the State of Nevada.
21

22 18. According to publicly available records, and upon information and belief,
23 Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE III
24 GENTLEMEN'S CLUB and RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN'S
25 CLUB are, and at all times relevant to this action were, Limited Liability Companies organized
26 and existing pursuant to the laws of the State of Nevada doing business as a strip club under the
27 name "Crazy Horse III Gentlemen's Club" in Las Vegas, Nevada. Defendant, SN
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INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III GENTLEMEN’S CLUB, is, and at all times relevant to this action was, a Limited Liability Company organized and existing pursuant to the laws of the State of Delaware and registered with the State of Nevada that is doing business in Las Vegas, Nevada as a strip club under the name “Crazy Horse III Gentlemen’s Club.”

19. Venue is proper in the United States District Court for the District of Nevada because Clark County is the principal place of business for Defendants. Venue is also proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claims occurred in Clark County in the District of Nevada.

20. All parties have minimum contacts with Clark County, a significant portion of the alleged causes of action arose and accrued in Clark County, Nevada, and the center of gravity for a significant portion of all relevant events alleged in this Complaint is predominately located in Clark County.

PARTIES

A. Plaintiffs

21. Given the multitude of violations harming the Plaintiff models, in the interest of judicial economy, Plaintiffs, through counsel, respectfully consolidate all actionable violations presently known into this single collective action (with distinct claims per each model) on behalf of the following models.

22. Plaintiff EMILY SEARS (“Sears”) is, and at all times relevant to this action was, a well-known professional model and a resident of Los Angeles County, California.

23. Plaintiff NAJOME COLON a/k/a GIA MACOOL (“Macool”) is, and at all times relevant to this action was, a well-known professional model and a resident of Orange County, Florida.

24. Plaintiff RACHEL BERNSTEIN a/k/a RACHEL KOREN (“Koren”) is, and at all times relevant to this action was, a well-known professional model and a resident of Los Angeles, California.

25. Plaintiff LUCY PINDER (“Pinder”) is, and at all times relevant to this action was, a well-known professional model and a resident of the United Kingdom.

26. Plaintiff MARIANA DAVALOS (“Davalos”) is, and at all times relevant to this action was, a well-known professional model and a resident of Los Angeles, California.

B. Defendant

27. According to publicly available records, and upon information and belief, Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE III GENTLEMEN’S CLUB and RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN’S CLUB are Limited Liability Companies organized under the laws of the State of Nevada, and own and operate a strip club under the name Crazy Horse III Gentlemen’s Club located at 3525 West Russell Road, Las Vegas, Nevada 89118. Defendant, SN INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III GENTLEMEN’S CLUB, is a Limited Liability Company organized under the laws of the State of Delaware that is registered to do business in Nevada and owns and operates a strip club under the name Crazy Horse III Gentlemen’s Club located at 3525 West Russell Road, Las Vegas, Nevada 89118.

28. Crazy Horse holds, and at all times relevant has held, itself out as an operator of a strip club that engages in the business of entertaining its patrons with alcohol, fully nude and/or semi-nude dancing, and private dancing.

29. Crazy Horse owns and/or operates www.crazyhorse3.com, as well as other social media accounts and websites, such as <https://www.facebook.com/CrazyHorse3LV/>, Instagram with a user name “@crazyhorse3lv”, and Twitter with username “@CRAZYHORSE3LV”

1 through which they advertise their business, events, and parties. For many of these events,
2 images of one or more of the models were used to market and promote the events.

3 30. Upon information and belief, Crazy Horse coordinated their promotional, Internet,
4 and social media activities through active and dynamic use of their Facebook and other social
5 media accounts and website.

6 **FACTUAL ALLEGATIONS**

7 **A. Standard and Customary Business Practices in the Modeling Industry** 8 **Require Arms-Length Negotiations over the Terms and Conditions of Usage and** 9 **Remuneration for any Modeling Images**

10 31. As set forth immediately below, Plaintiff Models were extremely well-known
11 professional models who earned a livelihood modeling and selling images to companies,
12 magazines, and individuals for the purpose of advertising, endorsing, or promoting products and
13 services.

14 32. Plaintiff Models' careers in the modeling industry placed a high degree of value
15 on good will and reputation, which was critical in order to maximize earning potential, book
16 modeling contracts, and establish individual brands. In furtherance of establishing, and
17 maintaining their brands, Plaintiff Models were necessarily selective concerning the companies,
18 and brands, for which they chose to model.

19 33. Being vigilant and proactive about protecting one's reputation is therefore of
20 paramount importance.

21 34. Plaintiff Models are professional models who earn a living by promoting their
22 image and likeness to select clients, commercial brands, media and entertainment outlets, as well
23 as relying on reputation and brand for modeling, acting, hosting, and other opportunities.

24 35. Plaintiff Models careers in the modeling, acting, and/or private enterprise has
25 value stemming from the goodwill and reputation each has built, all of which is critical to
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1 establishing an individual brand, being selected for modeling contracts, and maximizing
2 earnings.

3 36. Each Plaintiff Model has worked to establish herself as reliable, reputable, and
4 professional.

5 37. Each Plaintiff Model must necessarily be vigilant in protecting her “brand” from
6 harm, taint, or other diminution. In furtherance of establishing, and maintaining her brands, each
7 Plaintiff Model was necessarily selective concerning the companies and brands for which she
8 chose to model.
9

10 38. Any improper or unauthorized use of an image, likeness, or identity could
11 substantially injure the career and career opportunities of each Plaintiff Model.

12 39. In the modeling industry, models such as the Plaintiffs typically do not have a
13 single employer, but rather work on an independent contractor basis for different agents or
14 entities. Each Plaintiff Model is a responsible professional in the ordinary course. Each Plaintiff
15 Model seeks to control the use and dissemination of her image and, thus, actively participates in
16 vetting and selecting modeling, acting, brand spokesperson, or hosting engagements.
17

18 40. A model’s vetting and selection of a professional engagement involves a multi-
19 tiered assessment, requiring the model to:

20 a. determine whether the individual or entity seeking a license and release of a
21 model’s image, likeness, or identity is reputable, has reputable products or services, and, through
22 affiliation, would enhance or harm a model’s stature or reputation;

23 b. use this reputational information in negotiating compensation which typically
24 turns on the work a model is hired to do, the time involved, travel, and how her image is going to
25 be used (among other variables);
26

27 ///
28

1 c. protect her reputation and livelihood by carefully and expressly defining the
2 terms and conditions of use; and

3 d. reduce and memorialize the negotiated deal into an integrated, written
4 agreement which defines the parties' relationship. Endorsing, promoting, advertising, or
5 marketing the "wrong" product, service, or corporate venture, or working in or being affiliated
6 with a disreputable industry can severely impact a model's career by limiting or foreclosing
7 future modeling or brand endorsement opportunities. Conversely, association with high-end
8 companies, products, or magazines can enhance and amplify a model's earning potential and
9 career opportunities by making a model more sought after and desirable.
10

11 41. For these reasons, *even if* a model chose to jeopardize her career for a
12 compromising engagement – such as appearing in an advertisement for a strip club – the fee she
13 would charge would necessarily far exceed the fee typically charged for more mainstream and
14 reputable work.
15

16 **B. Defendants have Misappropriated Each Plaintiff's Image, Likeness, and/or**
17 **Identity Without Authority, for Self-Serving Commercial Gain and Without Offering or**
18 **Paying Compensation to any Plaintiff**

19 42. Defendants operate a Las Vegas-based strip club under the name Crazy Horse III
20 Gentlemen's Club where it engages in the business of selling alcohol and food in an atmosphere
21 where nude and/or semi-nude women entertain the business' clientele.

22 43. Crazy Horse does this for its own commercial and financial benefit.

23 44. As set forth below, each Plaintiff Model's image, likeness, and/or identity has
24 been misappropriated by or at the direction of Defendants. Defendants' conduct creates the false
25 and misleading appearance and impression that each Plaintiff either works for Defendants, has
26 appeared and participated, or will appear and participate in activities or events at Crazy Horse,
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1 and/or has agreed and consented to advertise, promote, market, or endorse Crazy Horse or Crazy
2 Horse events or activities.

3 45. Plaintiff Models have personal and proprietary interest in their right to privacy
4 and publicity arising out of their persona and likeness contained within their images. Plaintiff
5 Models' interest is separate and apart from any copyright claim that may or may not exist to the
6 photographs that encompass Plaintiff Models' images. Plaintiff Models' persona, in the form of
7 their likeness, is not copyrightable and their rights of publicity are independent of any
8 copyright. *See e.g. Downing v. Abercrombie Fitch*, 265 F. 3d 994, 1005 (9th Cir. 2001).
9

10 46. To the extent any copyright (or some other "right" for that matter) may exist for
11 photograph depicting Plaintiff Models' images, Plaintiff Models allege that Defendants have
12 totally and completely destroyed any such copyright by morphing, editing, or otherwise altering
13 the original photographs.
14

15 47. The manner in which Defendants used Plaintiff Models' images suggests to the
16 public that Plaintiff Models are promoting or otherwise endorsing Defendants' establishment
17 with the goal of increasing Crazy Horse visibility, driving clientele to attend the advertised
18 events, and to otherwise increase revenue and drive profits.
19

20 48. Crazy Horse has used, advertised, created, printed, and distributed the images of
21 Plaintiffs, as further described and identified above, to create the false impression with potential
22 clientele that Plaintiff Models either worked at, or endorsed, Crazy Horse.

23 49. Crazy Horse used Plaintiff Models' image, and created the false impression that
24 they worked at or endorsed Crazy Horse in order to receive certain benefits, including but not
25 limited to: monetary payments; increased promotional opportunities, advertising, marketing, and
26 other public relations benefits; notoriety; publicity; as well as an increase in business revenue,
27 profits, proceeds, and income.
28

50. As Crazy Horse was at all times aware, at no point have Plaintiff Models ever been affiliated with or employed by Crazy Horse, and at no point have Plaintiff Models ever endorsed Crazy Horse.

51. All of Crazy Horse's activities, including its misappropriation of Plaintiff Models' images, and publication of them, were done without the knowledge or consent of Plaintiff Models, and Crazy Horse did not compensate Plaintiff Models for its use of their images. As such, Plaintiff Models have never received any benefit for Crazy Horse's use of their images. Defendants used Plaintiff Models' images without their consent, and without providing remuneration, in order to permanently deprive the Plaintiff Models of their right to determine the use their images.

52. Upon information and belief, Defendants have taken the foregoing actions with the intent of causing irreparable harm to each of the Plaintiff Models.

Plaintiff Emily Sears

53. Sears is, and at all times relevant to this action was, an Australian model, spokeswoman and social media phenom. As a social media influencer, she encourages conversation via the content she creates. Sears shares body positive images with millions of followers and supports others to have the confidence to seek out healthy relationships. Through her efforts, she's witnessed a ripple effect of kindness and self-acceptance in her interactions with others. Sears believes social media empowers women to represent themselves how they want, as opposed to what industries may demand. These avenues have proven that every body type is beautiful. As a curvy model, Emily has been able to redirect her career with the power of social. People now control what is popular in the world, and she's humbled to have the opportunity to influence others to direct their own paths. Sears has appeared in titles such as: *GQ USA*, *FHM*, *MAXIM*, *Kandy Magazine*, *Ralph, M*, *Transworld*, *Motocross*, *Esquire*, and *ZOO Weekly*. Sears

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1 represented world-wide brands such as, Ciroc, Naven, Strike force MMA, Kumo Tires, Comfort
2 Revolution, Two In The Shirt, Monster Energy, and Maneater Swimwear. Emily has also
3 appeared in a variety of TVC and music video roles including national campaigns and
4 internationally renowned music artists worldwide. Sears has her own commercial website
5 <http://www.emilysears.com/index.php>. Sears has a combined tally of over 5 million Social
6 Media Followers.¹

7
8 54. In all instances of commercial marketing and promotion of her image, likeness, or
9 identity by third parties, Sears negotiated and expressly granted authority for such use pursuant
10 to agreed-upon terms and conditions and for agreed-upon compensation.

11 55. Sears' image, likeness, and/or identity are depicted in at least one photograph,
12 enclosed as **Exhibit A** to the Complaint, which was posted on social media on at least one
13 occasion (and has remained publically posted since those initial posting, constituting a
14 continuous and ongoing harm) to create the false perception that Sears has consented or agreed
15 to promote, advertise, market, and/or endorse Crazy Horse. Specifically, on or about July 5, 2017
16 Sears' image (posed left in black lingerie, eating pizza) was uploaded to Instagram with intent to
17 promote and market Crazy Horse's strip club. The caption on the image of Sears reads, "Watch
18 the fight with us! Beer bucket specials and free pizza [pizza emoji] Yumm pizza! Hope to see
19 your faces! #ch3 #ch3dolls #crazyhorse3lv #crazyhorse3 #sexywomen #ufcviewing #ufc
20 #pizza." The use of the image falsely implied that Sears represents Defendants' strip club and
21 that she authorized Crazy Horse to use her image for promotional and marketing purposes. The
22 image was used without the consent of Sears and was manipulated to intentionally give the
23 impression that Sears is a spokesperson for Crazy Horse, working at Crazy Horse, and/or that she
24 endorses Crazy Horse.
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28 ¹ In today's world of modeling, the number of online "followers" or "likes" is a strong factor in determining the earning capacity of a model and in establishing the notoriety (fame) of a model.

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1 56. Sears' image, likeness, and/or identity in **Exhibit A** is being used as advertising,
2 and on social media.

3 57. Defendants' unauthorized use of Sears' image and likeness was continuous and
4 ongoing in that it was never removed after it was initially posted by Defendants; further, the
5 manner in which Defendants used the subject image was ongoing and continuous in that any
6 person visiting Defendants' Instagram account could view, access, and even download the image
7 from the date it was first posted until present. During the entire timeframe that Defendants used
8 Sears' image and likeness, it did so unlawfully, without authorization, and consent, and Sears
9 suffered a continued or repeated injury as a result of Defendants' unlawful conduct.
10

11 58. Sears has never been hired by Defendants or contracted with Defendants to
12 advertise, promote, market, or endorse Defendants' businesses, Crazy Horse or any Crazy Horse
13 event.
14

15 59. Defendants never sought permission or authority to use Sears' image, likeness, or
16 identity to advertise, promote, market, or endorse Defendants' businesses, Crazy Horse, or any
17 Crazy Horse event.

18 60. Sears never gave permission, assigned, licensed, or otherwise consented to
19 Defendants using her image, likeness, or identity to advertise, promote, market, or endorse
20 Defendants' businesses, Crazy Horse, or any Crazy Horse event.
21

22 61. Defendants neither offered nor paid any remuneration to Sears for the
23 unauthorized use of her image, likeness, or identity.

24 62. Defendants' use of Sears' image, likeness, and/or identity in connection with
25 Crazy Horse impugns Sears' character, embarrasses her, and suggests – falsely – her support and
26 endorsement of Defendants' establishment.
27

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63. Defendants' improper use of Sears' image permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Sears' image in their market activities and business. In doing so, Defendants have further damaged Sears.

Plaintiff Najome Colon a/k/a Gia Macool

64. Macool is, and at all times relevant to this action was, a a glamour and swimwear model, spokeswomen, and entrepreneur. Colon has modeled for *American Curves Magazine*, *ProRider*, and was the BikiniTeam.com model of the month for March 2018. She also appeared as *Playboy's* Playmate of the Month in their November 2014 issues. Colon is also an active spokesperson and host, serving as the spokesmodel for the CoolFitTV YouTube channel, and is a designer and entrepreneur, selling her swimwear lines, as well as other products, at www.giamacool.com. Colon has 1,700,000 followers on Instagram, over 5,500,000 followers on Facebook, and over 83,100 followers on Twitter.

65. In all instances of commercial marketing and promotion of her image, likeness, or identity by third parties, Macool negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

66. Macool's image, likeness, and/or identity are depicted in at least one photograph, enclosed as **Exhibit B** to the Complaint, which was posted on social media on at least one occasion (and has remained publicly posted since those initial posting, constituting a continuous and ongoing harm) to create the false perception that Macool has consented or agreed to promote, advertise, market, and/or endorse Crazy Horse. Specifically, on or about July 9, 2016, Macool's image (from the shoulders down wearing a white/transparent shirt/dress) was uploaded to Crazy Horse's Instagram with intent to promote and market Defendants' strip club. The Image of Macool was uploaded with the following caption: "Saturday night @crazyhorse3lv #ch3girls." The use of the image falsely implied that Macool represents Defendants' strip club and that she

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1 authorized Crazy Horse to use her image for promotional and marketing purposes. The image
2 was used without the consent of Macool and was manipulated to intentionally give the
3 impression that Macool is a spokesperson for Crazy Horse, working at Crazy Horse, and/or that
4 she endorses Crazy Horse.

5
6 67. Macool's image, likeness, and/or identity in **Exhibit B** is being used as
7 advertising, and on social media.

8 68. Defendants' unauthorized use of Macool's image and likeness was continuous
9 and ongoing in that it was never removed after it was initially posted by Defendants; further, the
10 manner in which Defendants used the subject image was ongoing and continuous in that any
11 person visiting Defendants' Facebook and/or Twitter accounts could view, access, and even
12 download the image from the date it was first posted until present. During the entire timeframe
13 that Defendants used Macool's image and likeness, they did so unlawfully, without
14 authorization, and consent, and Macool suffered a continued or repeated injury as a result of
15 Defendants' unlawful conduct.
16

17 69. Macool has never been hired by Defendants or contracted with Defendants to
18 advertise, promote, market, or endorse Defendants' businesses, Crazy Horse or any Crazy Horse
19 event.
20

21 70. Defendants never sought permission or authority to use Macool's image, likeness,
22 or identity to advertise, promote, market, or endorse Defendants' businesses, Crazy Horse, or any
23 Crazy Horse event.

24 71. Macool never gave permission, assigned, licensed, or otherwise consented to
25 Defendants using her image, likeness, or identity to advertise, promote, market, or endorse
26 Defendants' businesses, Crazy Horse, or any Crazy Horse event.
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72. Defendants neither offered nor paid any remuneration to Macool for the unauthorized use of her image, likeness, or identity.

73. Defendants' use of Macool's image, likeness, and/or identity in connection with Crazy Horse impugns Macool's character, embarrasses her, and suggests – falsely – her support and endorsement of Defendants' establishment.

74. Defendants' improper use of Macool's image permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Macool's image in their market activities and business. In doing so, Defendants have further damaged Macool.

Plaintiff Rachel Bernstein a/k/a Rachel Koren

75. Koren is, and at all times relevant to this action was, an international model. She has walked runways for fashion shows in Miami's Mercedes Benz Fashion Week, filmed for travel TV show "Bikini Destinations" all over the world, shot for major campaigns in Los Angeles, CA, and is the face of many brands. Koren appeared in a campaign for MIDORI with Kim Kardashian and in the movie "Date Night" with Steve Carell and Tina Fey. She also played the character of "Sue Emery" in an episode of "The Closer" where she can be seen doing her own stunts. She has also been published in major campaigns and worked for companies including Nike, Reebok, Affliction Clothing, Volcom, Body Glove, Sinful, American Customs, Alo, *Modern Salon Magazine*, No Fear, Axe Body Spray, Paul Mitchell, *Vibra Magazine*, *Launch Pad Magazine*, *Cut & Dry Magazine*, *Hairdo Magazine*, Sunset Tan, Divine Boutique, *Esquire Magazine*, *Vogue Magazine*, True Religion, Jessica Simpson Swimwear, Ed Hardy, Christian Audigier, Smet, *Rebel X Magazine*, SNI Swimwear, Tommy Bahama, Roma, J Valentine, Sunsets Inc, B Swim, Love Culture, *Maxim*, *Viva Glam Magazine*, Fantasy Lingerie, Elegant Moments, So Cal Swimwear, No Fear, *Swim Magazine*, American Honey, and Have

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1 Faith Swimwear. She currently owns her own company, Cashmere Hair Extensions, which
2 appeared on the show “Shark Tank” in 2013.

3 76. In all instances of commercial marketing and promotion of her image, likeness, or
4 identity by third parties, Koren negotiated and expressly granted authority for such use pursuant
5 to agreed-upon terms and conditions and for agreed-upon compensation.
6

7 77. Koren’s image, likeness, and/or identity are depicted in at least one photograph,
8 enclosed as **Exhibit C** to the Complaint, which was posted on social media on at least one
9 occasion (and has remained publicly posted since those initial posting, constituting a continuous
10 and ongoing harm) to create the false perception that Koren has consented or agreed to promote,
11 advertise, market, and/or endorse Crazy Horse. Specifically, on or about November 29, 2016,
12 Koren’s image (posed in sexy “Santa” lingerie) was uploaded to Crazy Horse’s Facebook and/or
13 Instagram with intent to promote and market Defendants’ strip club. The Image of Koren was
14 uploaded with a caption reading, “Help us put a smile on a child’s face this season and we’ll put
15 one on yours. [smiley face emoji] Drop off your @98.5kluc unwrapped toy donation to us from
16 Dec. 1 through Dec. 10 and receive a #free drink! #toyddrive #feelthetingle.” This Image of
17 Koren was posted to Crazy Horse’s Facebook page again on or about November 30, 2016 with
18 no caption but part of an advertisement for Crazy Horse’s toy drive promotion. The use of the
19 image falsely implied that Koren represents Defendants’ strip club and that she authorized Crazy
20 Horse to use her image for promotional and marketing purposes. The image was used without the
21 consent of Koren and was manipulated to intentionally give the impression that Koren is a
22 spokesperson for Crazy Horse, working at Crazy Horse, and/or that she endorses Crazy Horse.
23

24 78. Koren’s image, likeness, and/or identity in **Exhibit C** is being used as advertising,
25 and on social media.
26

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28

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1 79. Defendants' unauthorized use of Koren's image and likeness was continuous and
2 ongoing in that it was never removed after it was initially posted by Defendants; further, the
3 manner in which Defendants used the subject image was ongoing and continuous in that any
4 person visiting Defendants' Facebook account could view, access, and even download the image
5 from the date it was first posted until present. During the entire timeframe that Defendants used
6 Koren's image and likeness, they did so unlawfully, without authorization, and consent, and
7 Koren suffered a continued or repeated injury as a result of Defendants' unlawful conduct.
8

9 80. Koren has never been hired by Defendants or contracted with Defendants to
10 advertise, promote, market, or endorse Defendants' businesses, Crazy Horse or any Crazy Horse
11 event.
12

13 81. Defendants never sought permission or authority to use Koren's image, likeness,
14 or identity to advertise, promote, market, or endorse Defendants' businesses, Crazy Horse, or any
15 Crazy Horse event.
16

17 82. Koren never gave permission, assigned, licensed, or otherwise consented to
18 Defendants using her image, likeness, or identity to advertise, promote, market, or endorse
19 Defendants' businesses, Crazy Horse, or any Crazy Horse event.
20

21 83. Defendants neither offered nor paid any remuneration to Koren for the
22 unauthorized use of her image, likeness, or identity.
23

24 84. Defendants' use of Koren's image, likeness, and/or identity in connection with
25 Crazy Horse impugns Koren's character, embarrasses her, and suggests – falsely – her support
26 and endorsement of Defendants' establishment.
27

28 85. Defendants' improper use of Koren's image permitted, encouraged, or facilitated
other persons, firms, and entities to further utilize and misappropriate Koren's image in their
market activities and business. In doing so, Defendants have further damaged Koren.

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Plaintiff Lucy Pinder

86. Pinder is, and at all times relevant to this action, was an English model, actress, host, businesswoman and one of Great Britain's most famous glamour models. Pinder has featured in publications such as *FHM*, *Nuts*, *Loaded* and *the Daily Star*, and hundreds of others. Pinder has appeared on *FHM*'s list of the "100 Sexiest Women in the World" in 2005, 2006 and 2007. Pinder was a guest columnist in *Nuts*, entitled "The Truth About Women" and appeared on the final edition of *Nuts* magazine cover. Pinder has collaborated with major brands such as Unilever (Lynx) and Camelot (National Lottery) and others, and on large national and international advertising campaigns. Pinder has an established and developing acting career with many TV appearances and Film credits. Pinder has appeared on shows such as *I'm Famous and Frightened*, *Soccer AM*, *Weakest Link*, *Nuts Tv (host)* *MTV's TMF (presenter)*, *Hotel Babylon*, and *Team and Bo!* in the USA. Pinder was also a contestant on *Celebrity Big Brother*. Pinder had starring roles in films such as *The Seventeenth Kind*, *Age of Kill*, and *Warrior Savitri*. Pinder works closely with a number of Wildlife charities and is involved in fundraising for 'Tiger Time, The David Shepherd Wildlife Foundation and International Animal Rescue'. Pinder has also worked with *Help for Heroes* appearing in the *Hots Shots* fund raising calendar and supported Male Cancer Awareness Campaign taking part in their MCAC London Strut awareness initiative. She also visited troops in Afghanistan in 2007. Pinder's own annual calendar continues to be one of the bestselling model calendars year after year and enhances Pinder's status as an elite class of Social Media Influencers with a combined total of over 2 million followers on Facebook, Instagram, and Twitter.

87. In all instances of commercial marketing and promotion of her image, likeness, or identity by third parties, Pinder negotiated and expressly granted authority for such use pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

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1 88. Pinder's image, likeness, and/or identity are depicted in at least one photograph,
2 enclosed as **Exhibit D** to the Complaint, which was posted on social media on at least one
3 occasion (and has remained publicly posted since those initial posting, constituting a continuous
4 and ongoing harm) to create the false perception that Pinder has consented or agreed to promote,
5 advertise, market, and/or endorse Crazy Horse. Specifically, on or about March 20, 2015,
6 Pinder's image (posed in a pink top) was uploaded to Crazy Horse's Facebook page with intent
7 to promote and market Defendants' strip club. The Image of Pinder was uploaded with a caption
8 reading, "Who's ready for tonight at #CH3LV? #Friday #boobs #TGIF #Vegas #CH3girls
9 #FridayFunday #VIP #sexy #LasVegas #gentlemensclub #party." The use of the image falsely
10 implied that Pinder represents Defendants' strip club and that she authorized Crazy Horse to use
11 her image for promotional and marketing purposes. The image was used without the consent of
12 Pinder and was manipulated to intentionally give the impression that Pinder is a spokesperson for
13 Crazy Horse, working at Crazy Horse, and/or that she endorses Crazy Horse.
14

15 89. Pinder's image, likeness, and/or identity in **Exhibit D** is being used as
16 advertising, and on social media.
17

18 90. Defendants' unauthorized use of Pinder's image and likeness was continuous and
19 ongoing in that it was never removed after it was initially posted by Defendants; further, the
20 manner in which Defendants used the subject image was ongoing and continuous in that any
21 person visiting Defendants' Facebook account could view, access, and even download the image
22 from the date it was first posted until present. During the entire timeframe that Defendants used
23 Pinder's image and likeness, they did so unlawfully, without authorization, and consent, and
24 Pinder suffered a continued or repeated injury as a result of Defendants' unlawful conduct.
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1 91. Pinder has never been hired by Defendants or contracted with Defendants to
2 advertise, promote, market, or endorse Defendants' businesses, Crazy Horse or any Crazy Horse
3 event.

4 92. Defendants never sought permission or authority to use Pinder's image, likeness,
5 or identity to advertise, promote, market, or endorse Defendants' businesses, Crazy Horse, or any
6 Crazy Horse event.

7 93. Pinder never gave permission, assigned, licensed, or otherwise consented to
8 Defendants using her image, likeness, or identity to advertise, promote, market, or endorse
9 Defendants' businesses, Crazy Horse, or any Crazy Horse event.

10 94. Defendants neither offered nor paid any remuneration to Pinder for the
11 unauthorized use of her image, likeness, or identity.

12 95. Defendants' use of Pinder's image, likeness, and/or identity in connection with
13 Crazy Horse impugns Pinder's character, embarrasses her, and suggests – falsely – her support
14 and endorsement of Defendants' establishment.

15 96. Defendants' improper use of Pinder's image permitted, encouraged, or facilitated
16 other persons, firms, and entities to further utilize and misappropriate Pinder's image in their
17 market activities and business. In doing so, Defendants have further damaged Pinder.

18 *Plaintiff Mariana Davalos*

19 97. Davalos is, and at all times relevant to this action was, an international model.
20 Davalos has a twin sister, Camila, and together they started a modeling career at age 10. By the
21 time Davalos was 18, her career was already established in Colombia as one of the most famous
22 and successful models in all of Latin America. Davalos was the face of Nacar cosmetics and has
23 appeared in *Maxim* magazine, *Imagen* magazine, *Besame*, *SOHO TV*, *Rumbas de la Ciudad*, *La*
24 *Granja Tolima*, *Kiss Catalogue*, *Deluxe Jeans*, *Revista Soho*, *SCRIBE*, *Coed People*, *La Gemela*
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1 *mas Dulce, Para Hombre, Spiritual Jeans, and Satori*. Davalos is constantly listed in “The top
2 sexiest people in the World” lists and, whether solo or teamed up with her twin sister, is
3 constantly in demand. Davalos’ worldwide identity has continued to grow and her earning
4 capabilities have increased dramatically with more than 491,000 Instagram followers and over
5 62,000 Twitter followers.

6
7 98. In all instances of commercial marketing and promotion of her image, likeness, or
8 identity by third parties, Davalos negotiated and expressly granted authority for such use
9 pursuant to agreed-upon terms and conditions and for agreed-upon compensation.

10 99. Davalos’ image, likeness, and/or identity are depicted in at least one photograph,
11 enclosed as **Exhibit E** to the Complaint, which was posted on social media on at least one
12 occasion (and has remained publicly posted since those initial posting, constituting a continuous
13 and ongoing harm) to create the false perception that Davalos has consented or agreed to
14 promote, advertise, market, and/or endorse Crazy Horse. Specifically, on or about November 2,
15 2015, Davalos’ image (posed in a sexy referee costume) was uploaded to Crazy Horse’s
16 Instagram and/or Twitter with intent to promote and market Defendants’ strip club. The Image of
17 Davalos was uploaded with a caption reading, “Are you ready for some Monday Night Football
18 action? Catch the Colts vs Panthers game with all your favorite ladies [football, smiley face, and
19 trophy emojis] #MNF #football #vegas #game #ch3 #sports #viewingparty.” The use of the
20 image falsely implied that Davalos represents Defendants’ strip club and that she authorized
21 Crazy Horse to use her image for promotional and marketing purposes. The image was used
22 without the consent of Davalos and was manipulated to intentionally give the impression that
23 Davalos is a spokesperson for Crazy Horse, working at Crazy Horse, and/or that she endorses
24 Crazy Horse.
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1 100. Davalos' image, likeness, and/or identity in **Exhibit E** is being used as
2 advertising, and on social media.

3 101. Defendants' unauthorized use of Davalos' image and likeness was continuous and
4 ongoing in that it was never removed after it was initially posted by Defendants; further, the
5 manner in which Defendants used the subject image was ongoing and continuous in that any
6 person visiting Defendants' Facebook account could view, access, and even download the image
7 from the date it was first posted until present. During the entire timeframe that Defendants used
8 Davalos' image and likeness, they did so unlawfully, without authorization, and consent, and
9 Davalos suffered a continued or repeated injury as a result of Defendants' unlawful conduct.

10 102. Davalos has never been hired by Defendants or contracted with Defendants to
11 advertise, promote, market, or endorse Defendants' businesses, Crazy Horse or any Crazy Horse
12 event.

13 103. Defendants never sought permission or authority to use Davalos' image, likeness,
14 or identity to advertise, promote, market, or endorse Defendants' businesses, Crazy Horse, or any
15 Crazy Horse event.

16 104. Davalos never gave permission, assigned, licensed, or otherwise consented to
17 Defendants using her image, likeness, or identity to advertise, promote, market, or endorse
18 Defendants' businesses, Crazy Horse, or any Crazy Horse event.

19 105. Defendants neither offered nor paid any remuneration to Davalos for the
20 unauthorized use of her image, likeness, or identity.

21 106. Defendants' use of Davalos' image, likeness, and/or identity in connection with
22 Crazy Horse impugns Davalos' character, embarrasses her, and suggests – falsely – her support
23 and endorsement of Defendants' establishment.

24 ///

107. Defendants' improper use of Davalos' image permitted, encouraged, or facilitated other persons, firms, and entities to further utilize and misappropriate Davalos' image in their market activities and business. In doing so, Defendants have further damaged Davalos.

CAUSES OF ACTION

***Plaintiff Emily Sears' Causes of Action against
Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB; RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN'S
CLUB; and SN INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB***

SEARS COUNT I

(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Advertising)

108. Sears re-alleges paragraphs 1 – 21, 22, 27 - 52, and 53 – 63 above, and incorporates the same by reference as though fully set forth herein.

109. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Sears from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services or commercial activities....” 15 U.S.C. § 1125(a)(1)(B).

110. Defendants used Sears' image, likeness and/or identity as described herein without authority in order to create the perception that Sears worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants' businesses and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities.

111. Defendants' use of Sears' image, likeness and/or identity to advertise, promote and market Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities as described in this Complaint was false and misleading.

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1 112. Defendants' unauthorized use of Sears' image, likeness and/or identity as
2 described in this Complaint constitutes false advertising by suggesting or implying, among other
3 things, that Sears worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants'
4 businesses, Crazy Horse or Crazy Horse events or activities, or consented to or authorized
5 Defendants' usage of her image in order to advertise, promote, and market Defendants'
6 businesses or Crazy Horse events and activities and/or that Sears would participate in or appear
7 at the specific events promoted in the advertisements.
8

9 113. Defendants' false advertising described above has the capacity or tendency to
10 confuse consumers, including actual and prospective patrons of Crazy Horse, as to the general
11 quality of attendees and participants of Crazy Horse and in their events, as well as specifically
12 whether Sears worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants'
13 businesses, Crazy Horse or Crazy Horse events or activities, or consented to or authorized
14 Defendants' usage of her image in order to advertise, promote, and market Defendants'
15 businesses or Crazy Horse events and activities.
16

17 114. Upon information and belief, Defendants' false advertising described above did,
18 in fact, deceive and/or cause consumer confusion as to whether Sears worked at or was otherwise
19 affiliated with Crazy Horse, endorsed Defendants' businesses, Crazy Horse or Crazy Horse
20 events and activities, or consented to or authorized Defendants' usage of her image in order to
21 advertise, promote, and market Defendants' businesses or Crazy Horse events and activities.
22 Among other things, upon information and belief, such unauthorized use misled and served to
23 entice consumers and prospective consumers to join Crazy Horse, visit Crazy Horse, and
24 participate in events at Crazy Horse and had a material effect and impact on the decision of
25 members and prospective members and participants to join Crazy Horse, visit Crazy Horse, and
26 take part in the events at Crazy Horse.
27
28

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115. Defendants' advertisements, promotions and marketing of Crazy Horse and events at Crazy Horse occur in and are targeted to interstate commerce. Specifically, Defendants promote their businesses and events through interstate promotions and campaigns to target persons from different states throughout the United States. Defendants principally uses the World Wide Web, social media, and other vehicles of interstate commerce to advertise, market, promote, and entice or lure membership and attendance at Crazy Horse events.

116. Defendants' unauthorized use of Sears' image, likeness, and/or identity as described herein was designed to benefit Defendants' business interests by, among other things, promoting Crazy Horse and their activities and attracting clientele to Crazy Horse.

117. Defendants knew or should have known that their unauthorized use of Sears' image, likeness and/or identity would cause consumer confusion as described in this Complaint.

118. Defendants' unauthorized use of Sears' image, likeness and/or identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

119. Defendants' wrongful conduct as described herein was willful.

120. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

121. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Sears of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Sears.

122. The method and manner in which Defendants used the image of Sears further evinces that Defendants was aware of, or consciously disregarded, the fact that Sears did not consent to Defendants' use of the image to advertise Defendants' businesses.

123. Defendants had caused irreparable harm to Sears, her reputation, and brand by attributing to Sears the strip club lifestyle and activities at Crazy Horse.

124. Defendants' unauthorized use of Sears' image, likeness, and/or identity directly and proximately caused and continue to cause damage to Sears in an amount to be determined at trial.

WHEREFORE, Sears respectfully requests that the Court issue a judgment granting actual or compensatory damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

SEARS COUNT II

(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Endorsement)

125. Sears re-alleges paragraphs 1 – 21, 22, 27 – 52, and 53 – 63 above, and incorporates the same by reference as though fully set forth herein.

126. Section 43 of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) applies to Defendants, and protects Sears from the conduct described herein.

127. Defendants used Sears' image in order to create the false impression with the public that Sears either worked at Defendants' strip club, or endorsed Defendants' businesses. This was done to promote and attract clientele to Crazy Horse, and thereby generate revenue for Defendants.

128. Thus, this was done in furtherance of Defendants' commercial benefit.

129. Sears is in the business of commercializing her identity and selling her images to reputable brands and companies for profit. Defendants' customers are the exact demographic that views Sears' images in magazines and online. By virtue of Sears' use of her image and identity to build her brand, she has acquired a distinctiveness through secondary meaning. Sears' image either suggests the basic nature of her product or service, identifies the characteristic of her product or service, or suggests the characteristics of her product or service that requires an effort

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1 of the imagination by the consumer in order to be understood as descriptive. As such, her brand –
2 the reason her clients seek to hire her – is unique in that it is encompassed in her identity, i.e., her
3 persona.

4 130. Both Sears and Defendants compete in the entertainment industry, use similar
5 marketing channels and their respective endeavors overlap. They vie for the same dollars from
6 the same demographic consumer group.

7 131. As such, an unauthorized use of Sears' image to promote a strip club created an
8 undeniable confusion in Defendants' consumers' minds, which lead to competitive injury to
9 Sears. There is no doubt that Defendants' used Sears' image for advertising purposes, that is to
10 promote their business enterprises, as such, Defendants' unauthorized and unlawful use of Sears'
11 image and likeness was an existing intent to commercialize an interest in Sears' image and
12 likeness.

13 132. Defendants' use of Sears' image, likeness, and/or identity constitutes a false
14 designation of the source of origin, sponsorship, approval, or association which has deceived
15 Sears' fans and present and prospective clients into believing that Crazy Horse advertisements
16 are endorsed by Sears, or sponsored, approved by, or associated with Sears.

17 133. Despite the fact that Defendants was at all times aware that Sears neither worked
18 at, nor endorsed their strip club, nevertheless, they used Sears' image in order to mislead
19 potential customers as to Sears' employment at and/or affiliation with Crazy Horse.

20 134. Defendants knew that their use of Sears' image would cause consumer confusion
21 as to Sears' sponsorship and/or employment at Crazy Horse.

22 135. Upon information and belief, Defendants' use of Sears' image did in fact cause
23 consumer confusion as to Sears' employment at and/or endorsement of Defendants' businesses,
24 and the goods and services provided by Defendants.

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136. As a direct and proximate result of Defendants' actions, Sears has no control over the nature and quality of the line of products or services provided by Defendants, the nature of the advertisements depicting Sears' image, likeness, and/or identity, or how Sears' image, likeness, and/or identity is being depicted by Defendants.

137. Further, any failure, neglect, or default by Defendants will reflect adversely on Sears as the believed source of origin, sponsorship, approval, or association thereof, hampering efforts by Sears to continue to protect her reputation for high quality professional modeling, resulting in loss of sales thereof and the considerable expenditures to promote her personal modeling services to legitimate mainstream media, all to the irreparable harm of Sears.

138. Due to Defendants' unauthorized use of Sears' image, Sears has been damaged in an amount to be determined at trial.

WHEREFORE, Sears respectfully requests that the Court enter a judgment against Defendants and grant actual or compensatory damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

SEARS COUNT III
(Violation of Nevada's Right of Publicity Statute – NRS 597.810)

139. Sears re-alleges paragraphs 1 – 21, 22, 27 - 52, and 53 – 63 above, and incorporates the same by reference as though fully set forth herein.

140. Sears has a right of publicity under Nevada's Right of Publicity statute—NRS 597.810.

141. Defendants may not use the name, voice, signature, photograph or likeness of Sears for any commercial use without first having obtained her written consent for that use.

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1 142. As set forth herein, Defendants have violated Sears' right to publicity by invading
2 Sears' privacy, misappropriating her likeness, and publishing on Defendants' social media
3 outlets, the altered image, likeness, and/or identity of Sears, as it appears in **Exhibit A**, which
4 made it appear as though Sears was employed at Crazy Horse, or endorsed Defendants' strip
5 club, or any Crazy Horse events or activities.

6
7 143. Defendants' unauthorized use of Sears' image and likeness was continuous and
8 ongoing in that it was never removed after it was initially posted by Defendants; further, the
9 manner in which Defendants' used the subject image was ongoing and continuous in that any
10 person visiting Defendants' Facebook account could view, access, and even download the image
11 from the date it was first posted until present.

12 144. Sears is informed and believes and herein alleges that Defendants posted and
13 publicized her image and likeness in a manner that was hidden, inherently undiscoverable, or
14 inherently unknowable, in that Defendants published her image and likeness on social media
15 threads that, over time, are (for example, but not limited to) "pushed" down in time from
16 immediate visibility.

17
18 145. Sears is further informed and believes and herein alleges that discovery will prove
19 that Defendants' republicized Sears' image and likeness on various occasions, via different
20 mediums, after the initial date of the posting of her image and likeness (July 5, 2017) and
21 through the filing of this complaint.

22
23 146. Sears is informed and believes and herein alleges that Defendants' republication
24 of Sears' image and likeness was altered so as to reach a new audience and/or promote a
25 different product.

26 147. Despite the clear language of NRS 597.810, and at all relevant times, Defendants
27 published, printed, displayed, and/or publicly used Sears' image, likeness, and/or identity on
28

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1 their social media outlets, among others, for purposes of trade and/or commercial advertising
2 including, but not limited to, promoting, advertising, and marketing Crazy Horse and/or San's
3 events and activities.

4 148. The respective social media outlets were designed to attract business and generate
5 revenue for Crazy Horse.

6 149. Upon information and belief, Defendants' use of Sears' image, likeness and/or
7 identity did in fact attract clientele and generate business for Crazy Horse.

8 150. At all relevant times and at no point, did Defendants ever receive permission or
9 consent, be it written or otherwise, to use Sears' image, likeness, and/or identity on the Crazy
10 Horse social media outlets or for any other use or matter associated with Crazy Horse.

11 151. Defendants took these actions without Sears' permission, consent or authority, be
12 it written or otherwise. In fact, Defendants never sought permission nor authority to use Sears'
13 image, likeness and/or identity to advertise, promote, market or endorse Defendants' businesses,
14 Crazy Horse or any Crazy Horse event or activities or for any other use.

15 152. Sears never consented to, permitted, assigned, licensed, or otherwise agreed to
16 Defendants' use of her image, likeness and/or identity to advertise, promote, market or endorse
17 Defendants' businesses, Crazy Horse or any Crazy Horse event or activity.

18 153. Defendants was at all relevant times aware that they never received Sears'
19 permission or consent to use her Image on any website or social media account, or on any other
20 medium, in order to promote Crazy Horse.

21 154. At no point did Defendants ever compensate Sears for their use of her image,
22 likeness, and/or identity.

23 155. No applicable privilege or authorization exists for Defendants' use of Sears'
24 Image.

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156. Defendants intentionally or, at a minimum, recklessly, published, printed, displayed, or otherwise publicly disseminated or used Sears' image, likeness or identity without her express written or oral consent, for purposes of trade or for other commercial or advertising purposes as detailed in this Complaint.

157. Defendants caused irreparable harm to Sears, her reputation, and brand by attributing to Sears the strip club lifestyle and activities at Crazy Horse.

158. Defendants have also damaged Sears as a direct and proximate result of their unauthorized use of Sears' image, likeness and/or identity without compensating Sears.

159. Due to Defendants' violation of Sears' rights of privacy and publicity under NRS 597.810, Sears has been damaged in an amount to be determined at trial, but in all events not less than seventy-five thousand dollars (\$75,000.00), exclusive of punitive and exemplary damages.

160. In addition, Sears hereby requests an Order permanently enjoining Defendants from violating Sears' right to privacy and publicity.

161. In addition, Sears hereby requests an award of punitive damages, in an amount to be determined at trial, due to Defendants' knowing and intentional violation of her statutory rights to privacy and publicity.

WHEREFORE, Sears respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits, and other relief deemed just and proper by this Court.

SEARS COUNT IV
(Negligence and *Respondeat Superior*)

162. Sears re-alleges paragraphs 1 – 21, 22, 27 - 52, and 53 – 63 above, and incorporates the same by reference as though fully set forth herein.

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1 163. Sears is further informed and believes and herein alleges that Defendants maintain
2 or *should have maintained* employee policies and procedures which govern the use of
3 intellectual property, publicity rights, and/or the image and likeness of individuals for
4 promotional and advertising purposes which specifically prevent the *unauthorized and non-*
5 *consensual use* of intellectual property, publicity rights, and/or the image and likeness of
6 individuals for promotional and advertising purposes.
7

8 164. Further, Defendants should have maintained, or failed to maintain, policies and
9 procedures to ensure that their promotional and/or advertising materials and campaigns were not
10 deceptive or misleading in their advertising practices.
11

12 165. Defendants owed a duty of care to Sears to ensure that their advertising and
13 promotional materials and practices did not infringe on her property and publicity rights.
14

15 166. Defendants further owed a duty of care to consumers at large to ensure that their
16 promotional and/or advertising materials and campaigns were not deceptive or misleading in
17 their advertising practices.
18

19 167. Defendants breached their duty of care to both Sears and consumers by failing to
20 either adhere to, or implement, policies and procedures to ensure that the use of intellectual
21 property, publicity rights, and/or the image and likeness of individuals for promotional and
22 advertising purposes were not unauthorized, non-consensual, or false and deceptive.
23

24 168. Defendants further failed to enforce or implement the above-stated policies and/or
25 to communicate them to employees, and/or supervise their employees in order to ensure that
26 these policies, along with federal and Nevada law, were not violated. Defendants breached their
27 duty of care to Sears and consumers by their negligent hiring, screening, retaining, supervising,
28 and/or training of their employees and agents.

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169. Defendants' breach was the proximate cause of the harm Sears suffered when her Image was published without her consent, authorization and done so in a false, misleading, and/or deceptive manner.

170. As a result of Defendants' negligence, Sears has suffered damages in an amount to be determined at trial, but which in all events are in excess of seventy five thousand dollars (\$75,000), exclusive of punitive and exemplary damages.

***Plaintiff Najome Colon a/k/a Gia Macool's Causes of Action against
Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB; RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN'S
CLUB; and SN INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB***

**MACOOL COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Advertising)**

171. Macool re-alleges paragraphs 1 – 21, 23, 27 - 52, and 64 – 74 above, and incorporates the same by reference as though fully set forth herein.

172. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Macool from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person's goods, services or commercial activities” 15 U.S.C. §1125(a)(1)(B).

173. Defendants used Macool's image, likeness and/or identity as described herein without authority in order to create the perception that Macool worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants' businesses and activities, and/or consented to or authorized Defendants to use her image in order to advertise, promote, and market Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities.

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1 174. Defendants' use of Macool's image, likeness and/or identity to advertise, promote
2 and market Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities as
3 described in this Complaint was false and misleading.

4 175. Defendants' unauthorized use of Macool's image, likeness and/or identity as
5 described in this Complaint constitutes false advertising by suggesting or implying, among other
6 things, that Macool worked at or was otherwise affiliated with Crazy Horse, endorsed
7 Defendants' businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or
8 authorized Defendants' usage of her image in order to advertise, promote, and market
9 Defendants' businesses or Crazy Horse events and activities and/or that Macool would
10 participate in or appear at the specific events promoted in the advertisements.

11 176. Defendants' false advertising described above has the capacity or tendency to
12 confuse consumers, including actual and prospective patrons of Crazy Horse, as to the general
13 quality of attendees and participants of Crazy Horse and in their events, as well as specifically
14 whether Macool worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants'
15 businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or authorized
16 Defendants' usage of her image in order to advertise, promote, and market Defendants'
17 businesses or Crazy Horse events and activities.

18 177. Upon information and belief, Defendants' false advertising described above did,
19 in fact, deceive and/or cause consumer confusion as to whether Macool worked at or was
20 otherwise affiliated with Crazy Horse, endorsed Defendants' businesses, Crazy Horse, or Crazy
21 Horse events and activities, or consented to or authorized Defendants' usage of her image in
22 order to advertise, promote, and market Defendants' businesses or Crazy Horse events and
23 activities. Among other things, upon information and belief, such unauthorized use misled and
24 served to entice consumers and prospective consumers to join Crazy Horse, visit Crazy Horse,
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1 and participate in events at Crazy Horse and had a material effect and impact on the decision of
2 members and prospective members and participants to join Crazy Horse, visit Crazy Horse, and
3 take part in the events at Crazy Horse.

4 178. Defendants' advertisements, promotions and marketing of Crazy Horse and
5 events at Crazy Horse occur in and are targeted to interstate commerce. Specifically, Defendants
6 promotes their businesses and events through interstate promotions and campaigns to target
7 persons from different states throughout the United States. Defendants principally use the World
8 Wide Web, social media, and other vehicles of interstate commerce to advertise, market,
9 promote, and entice or lure membership and attendance at Crazy Horse events.

10 179. Defendants' unauthorized use of Macool's image, likeness and/or identity as
11 described herein was designed to benefit Defendants' businesses interests by, among other
12 things, promoting Crazy Horse and their activities and attracting clientele to Crazy Horse.

13 180. Defendants knew or should have known that their unauthorized use of Macool's
14 image, likeness and/or identity would cause consumer confusion as described in this Complaint.

15 181. Defendants' unauthorized use of Macool's image, likeness and/or identity as
16 described herein violates 15 U.S.C. §1125(a) and was wrongful.

17 182. Defendants' wrongful conduct as described herein was willful.

18 183. As such, the present case is an exceptional case warranting an award of
19 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

20 184. Defendants had actual or constructive knowledge of the wrongfulness of their
21 conduct, acted with intent to deprive Macool of a property interest, and further acted with actual
22 or constructive knowledge of the high probability that injury or damage would result to Macool.

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185. The method and manner in which Defendants used the image of Macool further evinces that Defendants was aware of or consciously disregarded the fact that Macool did not consent to Defendants' use of the image to advertise Defendants' businesses.

186. Defendants had caused irreparable harm to Macool, her reputation, and brand by attributing to Macool the strip club lifestyle and activities at Crazy Horse.

187. Defendants' unauthorized use of Macool's image, likeness, and/or identity directly and proximately caused and continue to cause damage to Macool in an amount to be determined at trial.

WHEREFORE, Macool respectfully requests that the Court issue a judgment granting actual or compensatory damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

MACOOL COUNT II
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Endorsement)

188. Macool re-alleges paragraphs 1 – 21, 23, 27 - 52, and 64 – 74 above, and incorporates the same by reference as though fully set forth herein.

189. Section 43 of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) applies to Defendants, and protects Macool from the conduct described herein.

190. Defendants used Macool's image in order to create the false impression with the public that Macool either worked at Defendants' strip club, or endorsed Defendants' businesses. This was done to promote and attract clientele to Crazy Horse, and thereby generate revenue for Defendants.

191. Thus, this was done in furtherance of Defendants' commercial benefit.

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1 192. Macool is in the business of commercializing her identity and selling her images
2 to reputable brands and companies for profit. Defendants' customers are the exact demographic
3 that views Macool's images in magazines and online. By virtue of Macool's use of her image
4 and identity to build her brand, she has acquired a distinctiveness through secondary meaning.
5 Macool's image either suggests the basic nature of her product or service, identifies the
6 characteristic of her product or service, or suggests the characteristics of her product or service
7 that requires an effort of the imagination by the consumer in order to be understood as
8 descriptive. As such, her brand – the reason her clients seek to hire her – is unique in that it is
9 encompassed in her identity, i.e., her persona.
10

11 193. Both Macool and Defendants compete in the entertainment industry, use similar
12 marketing channels, and their respective endeavors overlap. They vie for the same dollars from
13 the same demographic consumer group.
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15 194. As such, an unauthorized use of Macool's image to promote a strip club created
16 an undeniable confusion in Defendants' consumers' minds, which lead to competitive injury to
17 Macool. There is no doubt that Defendants used Macool's image for advertising purposes, that is
18 to promote their business enterprises, as such, Defendants' unauthorized and unlawful use of
19 Macool's image and likeness was an existing intent to commercialize an interest in Macool's
20 image and likeness
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22 195. Defendants' use of Macool's image, likeness, and/or identity constitutes a false
23 designation of the source of origin, sponsorship, approval, or association, which has deceived
24 Macool's fans, and present and prospective clients, into believing that Crazy Horse
25 advertisements are endorsed by Macool, or sponsored, approved or associated with Macool.
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1 196. Despite the fact that Defendants was at all times aware that Macool neither
2 worked at, nor endorsed their strip club, nevertheless, they used Macool's image in order to
3 mislead potential customers as to Macool's employment at and/or affiliation with Crazy Horse.

4 197. Defendants knew that their use of Macool's image would cause consumer
5 confusion as to Macool's sponsorship and/or employment at Crazy Horse.

6 198. Upon information and belief, Defendants' use of Macool's image did in fact cause
7 consumer confusion as to Macool's employment at and/or endorsement of Defendants'
8 businesses, and the goods and services provided by Defendants.

9 199. As a direct and proximate result of Defendants' actions, Macool has no control
10 over the nature and quality of the line of products or services provided by Defendants, the nature
11 of the advertisements depicting Macool's image, likeness, and/or identity, or how Macool's
12 image, likeness, and/or identity is being depicted by Defendants.

13 200. Further, any failure, neglect, or default by Defendants will reflect adversely on
14 Macool as the believed source of origin, sponsorship, approval, or association thereof, hampering
15 efforts by Macool to continue to protect her reputation for high quality professional modeling,
16 resulting in loss of sales thereof and the considerable expenditures to promote her personal
17 modeling services to legitimate mainstream media, all to the irreparable harm of Macool.

18 201. Due to Defendants' unauthorized use of Macool's image, Macool has been
19 damaged in an amount to be determined at trial.

20 **WHEREFORE**, Macool respectfully requests that the Court enter a judgment against
21 Defendants' and grant actual or compensatory damages in an amount to be determined at trial,
22 lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use,
23 attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that
24 is just and proper.
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MACOOL COUNT III
(Violation of Nevada's Right of Publicity Statute – NRS 597.810)

202. Macool re-alleges paragraphs 1 – 21, 23, 27 - 52, and 64 – 74 above, and incorporates the same by reference as though fully set forth herein.

203. Macool has a right of publicity under Nevada's Right of Publicity statute—NRS 597.810.

204. Defendants may not use the name, voice, signature, photograph or likeness of Macool for any commercial use without first having obtained her written consent for that use.

205. As set forth herein, Defendants have violated Macool's right to publicity by invading Macool's privacy, misappropriating her likeness, and publishing on Defendants' social media outlets and/or website, the altered image, likeness, and/or identity of Macool, as it appears in **Exhibit B**, which made it appear as though Macool was employed at Crazy Horse, or endorsed Defendants' strip club, or any Crazy Horse events or activities.

206. Defendants' unauthorized use of Macool's image and likeness was continuous and ongoing in that it was never removed after it was initially posted by Defendants; further, the manner in which Defendants used the subject image was ongoing and continuous in that any person visiting Defendants' Facebook account could view, access, and even download the image from the date it was first posted until present.

207. Macool is informed and believes and herein alleges that Defendants posted and publicized her image and likeness in a manner that was hidden, inherently undiscoverable, or inherently unknowable, in that Defendants published her image and likeness on social media threads that, over time, are (for example, but not limited to) "pushed" down in time from immediate visibility.

208. Macool is further informed and believes and herein alleges that discovery will prove that Defendants' republicized Macool's image and likeness on various occasions, via

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1 different mediums, after the initial date of the posting of her image and likeness (July 9, 2016)
2 and through the filing of this complaint.

3 209. Macool is informed and believes and herein alleges that Defendants' republication
4 of Macool's image and likeness was altered so as to reach a new audience and/or promote a
5 different product.

6
7 210. Despite the clear language of NRS 597.810, and at all relevant times, Defendants
8 published, printed, displayed, and/or publicly used Macool's image, likeness, and/or identity on
9 their social media outlets, among others, for purposes of trade and/or commercial advertising
10 including, but not limited to, promoting, advertising, and marketing Crazy Horse and/or Crazy
11 Horse events and activities.

12 211. The respective social media outlets were designed to attract business and generate
13 revenue for Crazy Horse.

14 212. Upon information and belief, Defendants' use of Macool's image, likeness and/or
15 identity did in fact attract clientele and generate business for Crazy Horse.

16 213. At all relevant times and at no point, did Defendants ever receive permission or
17 consent, be it written or otherwise, to use Macool's image, likeness, and/or identity on Crazy
18 Horse social media outlets or for any other use or matter associated with Crazy Horse.

19 214. Defendants took these actions without Macool's permission, consent or authority,
20 be it written or otherwise. In fact, Defendants never sought permission nor authority to use
21 Macool's image, likeness and/or identity to advertise, promote, market or endorse Defendants'
22 businesses, Crazy Horse or any Crazy Horse event or activities or for any other use.

23 215. Macool never consented to, permitted, assigned, licensed, or otherwise agreed to
24 Defendants' use of her image, likeness and/or identity to advertise, promote, market or endorse
25 Defendants' businesses, Crazy Horse or any Crazy Horse event or activity.
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1 216. Defendants was at all relevant times aware that they never received Macool's
2 permission or consent to use her Image on any website or social media account, or on any other
3 medium, in order to promote Crazy Horse.

4 217. At no point did Defendants ever compensate Macool for their use of her image,
5 likeness, and/or identity.

6 218. No applicable privilege or authorization exists for Defendants' use of Macool's
7 Image.

8 219. Defendants intentionally or, at a minimum, recklessly, published, printed,
9 displayed, or otherwise publicly disseminated or used Macool's image, likeness, and/or identity
10 without her express written or oral consent, for purposes of trade or for other commercial or
11 advertising purposes as detailed in this Complaint.

12 220. Defendants caused irreparable harm to Macool, her reputation, and brand by
13 attributing to Macool the strip club lifestyle and activities at Crazy Horse.

14 221. Defendants have also damaged Macool as a direct and proximate result of their
15 unauthorized use of Macool's image, likeness, and/or identity without compensating Macool.

16 222. Due to Defendants' violation of Macool's rights of privacy and publicity under
17 NRS 597.810, Macool has been damaged in an amount to be determined at trial, but in all events
18 not less than seventy-five thousand dollars (\$75,000.00), exclusive of punitive and exemplary
19 damages.

20 223. In addition, Macool hereby requests an Order permanently enjoining Defendants
21 from violating Macool's right to privacy and publicity.

22 224. In addition, Macool hereby requests an award of punitive damages, in an amount
23 to be determined at trial, due to Defendants' knowing and intentional violation of her statutory
24 rights to privacy and publicity.

1 **WHEREFORE**, Macool respectfully requests that the Court issue a judgment against
 2 Defendants for all remedies available under a claim of misappropriation including, but not
 3 limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds,
 4 including Defendants' profits and other relief deemed just and proper by this Court.

5
 6 **MACOOL COUNT IV**
 7 **(Negligence and *Respondeat Superior*)**

8 225. Macool re-alleges paragraphs 1 – 21, 23, 27 - 52, and 64 – 74 above, and
 9 incorporates the same by reference as though fully set forth herein.

10 226. Macool is further informed and believes and herein alleges that Defendants
 11 maintains or *should have maintained* employee policies and procedures which govern the use of
 12 intellectual property, publicity rights, and/or the image and likeness of individuals for
 13 promotional and advertising purposes which specifically prevent the *unauthorized and non-*
 14 *consensual use* of intellectual property, publicity rights and/or the image and likeness of
 15 individuals for promotional and advertising purposes.

16 227. Further, Defendants should have maintained, or failed to maintain, policies and
 17 procedures to ensure that their promotional and/or advertising materials and campaigns were not
 18 deceptive or misleading in their advertising practices.

19
 20 228. Defendants owed a duty of care to Macool to ensure that their advertising and
 21 promotional materials and practices did not infringe on her property and publicity rights.

22 229. Defendants further owed a duty of care to consumers at large to ensure that their
 23 promotional and/or advertising materials and campaigns were not deceptive or misleading in
 24 their advertising practices.

25
 26 230. Defendants breached their duty of care to both Macool and consumers by failing
 27 to either adhere to or implement policies and procedures to ensure that the use of intellectual
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property, publicity rights, and/or the image and likeness of individuals for promotional and advertising purposes were not unauthorized, non-consensual, or false and deceptive.

231. Defendants further failed to enforce or implement the above-stated policies and/or to communicate them to employees, and/or supervise their employees in order to ensure that these policies, along with federal and Nevada law, were not violated. Defendants breached their duty of care to Macool and consumers by their negligent hiring, screening, retaining, supervising, and/or training of their employees and agents.

232. Defendants' breach was the proximate cause of the harm Macool suffered when her Image was published without her consent, authorization and done so in a false, misleading, and/or deceptive manner.

233. As a result of Defendants' negligence, Macool has suffered damages in an amount to be determined at trial, but which in all events are in excess of seventy five thousand dollars (\$75,000), exclusive of punitive and exemplary damages.

***Plaintiff Rachel Bernstein a/k/a Rachel Koren's Causes of Action against
Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB; RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN'S
CLUB; and SN INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB***

KOREN COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Advertising)

234. Koren re-alleges paragraphs 1 – 21, 24, 27 - 52, and 75 – 85 above, and incorporates the same by reference as though fully set forth herein.

235. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Koren from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature, characteristics, qualities or geographic origin of his or her or another person's goods, services or commercial activities” 15 U.S.C. §1125(a)(1)(B).

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1 236. Defendants used Koren's image, likeness and/or identity as described herein
2 without authority in order to create the perception that Koren worked at or was otherwise
3 affiliated with Crazy Horse, endorsed Defendants' businesses and activities, and/or consented to
4 or authorized Defendants to use her image in order to advertise, promote, and market
5 Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities.

6 237. Defendants' use of Koren's image, likeness and/or identity to advertise, promote
7 and market Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities as
8 described in this Complaint was false and misleading.

9 238. Defendants' unauthorized use of Koren's image, likeness and/or identity as
10 described in this Complaint constitutes false advertising by suggesting or implying, among other
11 things, that Koren worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants'
12 businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or authorized
13 Defendants' usage of her image in order to advertise, promote, and market Defendants'
14 businesses or Crazy Horse events and activities and/or that Koren would participate in or appear
15 at the specific events promoted in the advertisements.

16 239. Defendants' false advertising described above has the capacity or tendency to
17 confuse consumers, including actual and prospective patrons of Crazy Horse, as to the general
18 quality of attendees and participants of Crazy Horse and in their events, as well as specifically
19 whether Koren worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants'
20 businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or authorized
21 Defendants' usage of her image in order to advertise, promote, and market Defendants'
22 businesses or Crazy Horse events and activities.

23 240. Upon information and belief, Defendants' false advertising described above did,
24 in fact, deceive and/or cause consumer confusion as to whether Koren worked at or was
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1 otherwise affiliated with Crazy Horse, endorsed Defendants' businesses, Crazy Horse, or Crazy
2 Horse events and activities, or consented to or authorized Defendants' usage of her image in
3 order to advertise, promote, and market Defendants' businesses or Crazy Horse events and
4 activities. Among other things, upon information and belief, such unauthorized use misled and
5 served to entice consumers and prospective consumers to join Crazy Horse, visit Crazy Horse,
6 and participate in events at Crazy Horse and had a material effect and impact on the decision of
7 members and prospective members and participants to join Crazy Horse, visit Crazy Horse, and
8 take part in the events at Crazy Horse.
9

10 241. Defendants' advertisements, promotions and marketing of Crazy Horse and
11 events at Crazy Horse occur in and are targeted to interstate commerce. Specifically, Defendants
12 promotes their businesses and events through interstate promotions and campaigns to target
13 persons from different states throughout the United States. Defendants principally uses the
14 World Wide Web, social media, and other vehicles of interstate commerce to advertise, market,
15 promote, and entice or lure membership and attendance at Crazy Horse events.
16

17 242. Defendants' unauthorized use of Koren's image, likeness and/or identity as
18 described herein was designed to benefit Defendants' businesses interests by, among other
19 things, promoting Crazy Horse and their activities and attracting clientele to Crazy Horse.
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21 243. Defendants knew or should have known that their unauthorized use of Koren's
22 image, likeness and/or identity would cause consumer confusion as described in this Complaint.

23 244. Defendants' unauthorized use of Koren's image, likeness and/or identity as
24 described herein violates 15 U.S.C. §1125(a) and was wrongful.

25 245. Defendants' wrongful conduct as described herein was willful.

26 246. As such, the present case is an exceptional case warranting an award of
27 reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.
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247. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Koren of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Koren.

248. The method and manner in which Defendants used the image of Koren further evinces that Defendants was aware of or consciously disregarded the fact that Koren did not consent to Defendants' use of the image to advertise Defendants' businesses.

249. Defendants had caused irreparable harm to Koren, her reputation, and brand by attributing to Koren the strip club lifestyle and activities at Crazy Horse.

250. Defendants' unauthorized use of Koren's image, likeness, and/or identity directly and proximately caused and continue to cause damage to Koren in an amount to be determined at trial.

WHEREFORE, Koren respectfully requests that the Court issue a judgment granting actual or compensatory damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

KOREN COUNT II
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Endorsement)

251. Koren re-alleges paragraphs 1 – 21, 24, 27 - 52, and 75 – 85 above, and incorporates the same by reference as though fully set forth herein.

252. Section 43 of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) applies to Defendants, and protects Koren from the conduct described herein

253. Defendants used Koren's image in order to create the false impression with the public that Koren either worked at Defendants' strip club, or endorsed Defendants' businesses.

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1 This was done to promote and attract clientele to Crazy Horse, and thereby generate revenue for
2 Defendants.

3 254. Thus, this was done in furtherance of Defendants' commercial benefit.

4 255. Koren is in the business of commercializing her identity and selling her images to
5 reputable brands and companies for profit. Defendants' customers are the exact demographic that
6 views Koren's images in magazines and online. By virtue of Koren's use of her image and
7 identity to build her brand, she has acquired a distinctiveness through secondary meaning.
8 Koren's image either suggests the basic nature of her product or service, identifies the
9 characteristic of her product or service, or suggests the characteristics of her product or service
10 that requires an effort of the imagination by the consumer in order to be understood as
11 descriptive. As such, her brand – the reason her clients seek to hire her – is unique in that it is
12 encompassed in her identity, i.e., her persona.

13 256. Both Koren and Defendants compete in the entertainment industry, use similar
14 marketing channels, and their respective endeavors overlap. They vie for the same dollars from
15 the same demographic consumer group.

16 257. As such, an unauthorized use of Koren's image to promote a strip club created an
17 undeniable confusion in Defendants' consumers' minds, which lead to competitive injury to
18 Koren. There is no doubt that Defendants' used Koren's image for advertising purposes, that is
19 to promote their business enterprises, as such, Defendants' unauthorized and unlawful use of
20 Koren's image and likeness was an existing intent to commercialize an interest in Koren's
21 image and likeness
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23 258. Defendants' use of Koren's image, likeness, and/or identity constitutes a false
24 designation of the source of origin, sponsorship, approval, or association, which has deceived
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1 Koren's fans, and present and prospective clients, into believing that Crazy Horse
2 advertisements are endorsed by Koren, or sponsored, approved or associated with Koren.

3 259. Despite the fact that Defendants was at all times aware that Koren neither worked
4 at, nor endorsed their strip club, nevertheless, they used Koren's image in order to mislead
5 potential customers as to Koren's employment at and/or affiliation with Crazy Horse.
6

7 260. Defendants knew that their use of Koren's image would cause consumer
8 confusion as to Koren's sponsorship and/or employment at Crazy Horse.

9 261. Upon information and belief, Defendants' use of Koren's image did in fact cause
10 consumer confusion as to Koren's employment at and/or endorsement of Defendants' businesses,
11 and the goods and services provided by Defendants.
12

13 262. As a direct and proximate result of Defendants' actions, Koren has no control
14 over the nature and quality of the line of products or services provided by Defendants, the nature
15 of the advertisements depicting Koren's image, likeness, and/or identity, or how Koren's image,
16 likeness, and/or identity is being depicted by Defendants.

17 263. Further, any failure, neglect or default by Defendants will reflect adversely on
18 Koren as the believed source of origin, sponsorship, approval, or association thereof, hampering
19 efforts by Koren to continue to protect her reputation for high quality professional modeling,
20 resulting in loss of sales thereof and the considerable expenditures to promote her personal
21 modeling services to legitimate mainstream media, all to the irreparable harm of Koren.
22

23 264. Due to Defendants' unauthorized use of Koren's image, Koren has been damaged
24 in an amount to be determined at trial.

25 **WHEREFORE**, Koren respectfully requests that the Court enter a judgment against
26 Defendants and grant actual or compensatory damages in an amount to be determined at trial,
27 lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use,
28

1 attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that
2 is just and proper.

3 **KOREN COUNT III**
4 **(Violation of Nevada's Right of Publicity Statute – NRS 597.810)**

5 265. Koren re-alleges paragraphs 1 – 21, 24, 27 - 52, and 75 – 85 above, and
6 incorporates the same by reference as though fully set forth herein.

7 266. Koren has a right of publicity under Nevada's Right of Publicity statute—NRS
8 597.810.

9 267. Defendants may not use the name, voice, signature, photograph or likeness of
10 Koren for any commercial use without first having obtained her written consent for that use.

11 268. As set forth herein, Defendants have violated Koren's right to publicity by
12 invading Koren's privacy, misappropriating her likeness, and publishing on Defendants' social
13 media outlets and/or website, the altered image, likeness, and/or identity of Koren, as it appears
14 in **Exhibit C**, which made it appear as though Koren was employed at Crazy Horse, or endorsed
15 Defendants' strip club, or any Crazy Horse events or activities.

16 269. Defendants' unauthorized use of Koren's image and likeness was continuous and
17 ongoing in that it was never removed after it was initially posted by Defendants; further, the
18 manner in which Defendants used the subject image was ongoing and continuous in that any
19 person visiting Defendants' Facebook account could view, access, and even download the image
20 from the date it was first posted until present.

21 270. Koren is informed and believes and herein alleges that Defendants posted and
22 publicized her image and likeness in a manner that was hidden, inherently undiscoverable, or
23 inherently unknowable, in that Defendants published her image and likeness on social media
24 threads that, over time, are (for example, but not limited to) "pushed" down in time from
25 immediate visibility.
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1 271. Koren is further informed and believes and herein alleges that discovery will
2 prove that Defendants' republicized Koren's image and likeness on various occasions, via
3 different mediums, after the initial date of the posting of her image and likeness (November 29,
4 2016) and through the filing of this complaint.

5 272. Koren is informed and believes and herein alleges that Defendants' republication
6 of Koren's image and likeness was altered so as to reach a new audience and/or promote a
7 different product.
8

9 273. Despite the clear language of NRS 597.810, and at all relevant times, Defendants
10 published, printed, displayed, and/or publicly used Koren's image, likeness, and/or identity on
11 their social media outlets, among others, for purposes of trade and/or commercial advertising
12 including, but not limited to, promoting, advertising, and marketing Crazy Horse and/or Crazy
13 Horse events and activities.
14

15 274. The respective social media outlets and website were designed to attract business
16 and generate revenue for Crazy Horse.

17 275. Upon information and belief, Defendants' use of Koren's image, likeness and/or
18 identity did in fact attract clientele and generate business for Crazy Horse.

19 276. At all relevant times and at no point, did Defendants ever receive permission or
20 consent, be it written or otherwise, to use Koren's image, likeness, and/or identity on the Crazy
21 Horse social media outlets or for any other use or matter associated with Crazy Horse.
22

23 277. Defendants took these actions without Koren's permission, consent or authority,
24 be it written or otherwise. In fact, Defendants never sought permission nor authority to use
25 Koren's image, likeness and/or identity to advertise, promote, market or endorse Defendants'
26 businesses, Crazy Horse or any Crazy Horse event or activities or for any other use.
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1 278. Koren never consented to, permitted, assigned, licensed, or otherwise agreed to
2 Defendants' use of her image, likeness and/or identity to advertise, promote, market or endorse
3 Defendants' businesses, Crazy Horse or any Crazy Horse event or activity.

4 279. Defendants was at all relevant times aware that they never received Koren's
5 permission or consent to use her Image on any website or social media account, or on any other
6 medium, in order to promote Crazy Horse.

7 280. At no point did Defendants ever compensate Koren for their use of her image,
8 likeness, and/or identity.

9 281. No applicable privilege or authorization exists for Defendants' use of Koren's
10 Image.

11 282. Defendants intentionally or, at a minimum, recklessly, published, printed,
12 displayed, or otherwise publicly disseminated or used Koren's image, likeness, and/or identity
13 without her express written or oral consent, for purposes of trade or for other commercial or
14 advertising purposes as detailed in this Complaint.

15 283. Defendants caused irreparable harm to Koren, her reputation, and brand by
16 attributing to Koren the strip club lifestyle and activities at Crazy Horse.

17 284. Defendants have also damaged Koren as a direct and proximate result of their
18 unauthorized use of Koren's image, likeness, and/or identity without compensating Koren.

19 285. Due to Defendants' violation of Koren's rights of privacy and publicity under
20 NRS 597.810, Koren has been damaged in an amount to be determined at trial, but in all events
21 not less than seventy-five thousand dollars (\$75,000.00), exclusive of punitive and exemplary
22 damages.

23 286. In addition, Koren hereby requests an Order permanently enjoining Defendants
24 from violating Koren's right to privacy and publicity.
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287. In addition, Koren hereby requests an award of punitive damages, in an amount to be determined at trial, due to Defendants' knowing and intentional violation of her statutory rights to privacy and publicity.

WHEREFORE, Koren respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

KOREN COUNT IV
(Negligence and *Respondeat Superior*)

288. Koren re-alleges paragraphs 1 – 21, 24, 27 - 52, and 75 – 85 above, and incorporates the same by reference as though fully set forth herein.

289. Koren is further informed and believes and herein alleges that Defendants maintain or *should have maintained* employee policies and procedures which govern the use of intellectual property, publicity rights, and/or the image and likeness of individuals for promotional and advertising purposes which specifically prevent the *unauthorized and non-consensual use* of intellectual property, publicity rights and/or the image and likeness of individuals for promotional and advertising purposes.

290. Further, Defendants should have maintained, or failed to maintain, policies and procedures to ensure that their promotional and/or advertising materials and campaigns were not deceptive or misleading in their advertising practices.

291. Defendants owed a duty of care to Koren to ensure that their advertising and promotional materials and practices did not infringe on her property and publicity rights.

292. Defendants further owed a duty of care to consumers at large to ensure that their promotional and/or advertising materials and campaigns were not deceptive or misleading in their advertising practices.

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293. Defendants breached their duty of care to both Koren and consumers by failing to either adhere to or implement policies and procedures to ensure that the use of intellectual property, publicity rights, and/or the image and likeness of individuals for promotional and advertising purposes were not unauthorized, non-consensual, or false and deceptive.

294. Defendants further failed to enforce or implement the above-stated policies and/or to communicate them to employees, and/or supervise their employees in order to ensure that these policies, along with federal and Nevada law, were not violated. Defendants breached their duty of care to Koren and consumers by their negligent hiring, screening, retaining, supervising, and/or training of their employees and agents.

295. Defendants' breach was the proximate cause of the harm Koren suffered when her Image was published without her consent, authorization and done so in a false, misleading, and/or deceptive manner.

296. As a result of Defendants' negligence, Koren has suffered damages in an amount to be determined at trial, but which in all events are in excess of seventy five thousand dollars (\$75,000), exclusive of punitive and exemplary damages.

***Plaintiff Lucy Pinder's Causes of Action against
Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB; RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN'S
CLUB; and SN INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB***

**PINDER COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Advertising)**

297. Pinder re-alleges paragraphs 1 – 21, 25, 27 – 52, and 86 – 96 above, and incorporates the same by reference as though fully set forth herein.

298. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants and protects Pinder from the conduct described herein. Specifically, the Lanham Act prohibits a party in commercial advertising and promotion from “misrepresent[ing] the nature,

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1 characteristics, qualities or geographic origin of his or her or another person's goods, services or
2 commercial activities" 15 U.S.C. §1125(a)(1)(B).

3 299. Defendants used Pinder's image, likeness and/or identity as described herein
4 without authority in order to create the perception that Pinder worked at or was otherwise
5 affiliated with Crazy Horse, endorsed Defendants' businesses and activities, and/or consented to
6 or authorized Defendants to use her image in order to advertise, promote, and market
7 Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities.

8 300. Defendants' use of Pinder's image, likeness and/or identity to advertise, promote
9 and market Defendants' businesses, Crazy Horse, and/or Crazy Horse events and activities as
10 described in this Complaint was false and misleading.

11 301. Defendants' unauthorized use of Pinder's image, likeness and/or identity as
12 described in this Complaint constitutes false advertising by suggesting or implying, among other
13 things, that Pinder worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants'
14 businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or authorized
15 Defendants' usage of her image in order to advertise, promote, and market Defendants'
16 businesses or Crazy Horse events and activities and/or that Pinder would participate in or appear
17 at the specific events promoted in the advertisements.

18 302. Defendants' false advertising described above has the capacity or tendency to
19 confuse consumers, including actual and prospective patrons of Crazy Horse, as to the general
20 quality of attendees and participants of Crazy Horse and in their events, as well as specifically
21 whether Pinder worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants'
22 businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or authorized
23 Defendants' usage of her image in order to advertise, promote, and market Defendants'
24 businesses or Crazy Horse events and activities.

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1 303. Upon information and belief, Defendants' false advertising described above did,
2 in fact, deceive and/or cause consumer confusion as to whether Pinder worked at or was
3 otherwise affiliated with Crazy Horse, endorsed Defendants' businesses, Crazy Horse, or Crazy
4 Horse events and activities, or consented to or authorized Defendants' usage of her image in
5 order to advertise, promote, and market Defendants' businesses or Crazy Horse events and
6 activities. Among other things, upon information and belief, such unauthorized use misled and
7 served to entice consumers and prospective consumers to join Crazy Horse, visit Crazy Horse,
8 and participate in events at Crazy Horse and had a material effect and impact on the decision of
9 members and prospective members and participants to join Crazy Horse, visit Crazy Horse, and
10 take part in the events at Crazy Horse.
11

12 304. Defendants' advertisements, promotions and marketing of Crazy Horse and
13 events at Crazy Horse occur in and are targeted to interstate commerce. Specifically, Defendants
14 promotes their businesses and events through interstate promotions and campaigns to target
15 persons from different states throughout the United States. Defendants principally use the World
16 Wide Web, social media, and other vehicles of interstate commerce to advertise, market,
17 promote, and entice or lure membership and attendance at Crazy Horse events.
18

19 305. Defendants' unauthorized use of Pinder's image, likeness and/or identity as
20 described herein was designed to benefit Defendants' businesses interests by, among other
21 things, promoting Crazy Horse and their activities and attracting clientele to Crazy Horse.
22

23 306. Defendants knew or should have known that their unauthorized use of Pinder's
24 image, likeness and/or identity would cause consumer confusion as described in this Complaint.

25 307. Defendants' unauthorized use of Pinder's image, likeness and/or identity as
26 described herein violates 15 U.S.C. §1125(a) and was wrongful.

27 308. Defendants' wrongful conduct as described herein was willful.
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309. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

310. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Pinder of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Pinder.

311. The method and manner in which Defendants used the image of Pinder further evinces that Defendants was aware of or consciously disregarded the fact that Pinder did not consent to Defendants' use of the image to advertise Defendants' businesses.

312. Defendants had caused irreparable harm to Pinder, her reputation, and brand by attributing to Pinder the strip club lifestyle and activities at Crazy Horse.

313. Defendants' unauthorized use of Pinder's image, likeness, and/or identity directly and proximately caused and continue to cause damage to Pinder in an amount to be determined at trial.

WHEREFORE, Pinder respectfully requests that the Court issue a judgment granting actual or compensatory damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

PINDER COUNT II
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Endorsement)

314. Pinder re-alleges paragraphs 1 – 21, 25, 27 – 52, and 86 – 96 above, and incorporates the same by reference as though fully set forth herein.

315. Section 43 of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) applies to Defendants, and protects Pinder from the conduct described herein

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1 316. Defendants used Pinder's image in order to create the false impression with the
2 public that Pinder either worked at Defendants' strip club, or endorsed Defendants' businesses.
3 This was done to promote and attract clientele to Crazy Horse, and thereby generate revenue for
4 Defendants.

5 317. Thus, this was done in furtherance of Defendants' commercial benefit.

6 318. Pinder is in the business of commercializing her identity and selling her images to
7 reputable brands and companies for profit. Defendants' customers are the exact demographic that
8 views Pinder's images in magazines and online. By virtue of Pinder's use of her image and
9 identity to build her brand, she has acquired a distinctiveness through secondary meaning.
10 Pinder's image either suggests the basic nature of her product or service, identifies the
11 characteristic of her product or service, or suggests the characteristics of her product or service
12 that requires an effort of the imagination by the consumer in order to be understood as
13 descriptive. As such, her brand – the reason her clients seek to hire her – is unique in that it is
14 encompassed in her identity, i.e., her persona.

15 319. Both Pinder and Defendants compete in the entertainment industry, use similar
16 marketing channels, and their respective endeavors overlap. They vie for the same dollars from
17 the same demographic consumer group.

18 320. As such, an unauthorized use of Pinder's image to promote a strip club created an
19 undeniable confusion in Defendants' consumers' minds, which lead to competitive injury to
20 Pinder. There is no doubt that Defendants' used Pinder's image for advertising purposes, that is
21 to promote their business enterprises, as such, Defendants' unauthorized and unlawful use of
22 Pinder's image and likeness was an existing intent to commercialize an interest in Pinder's
23 image and likeness.

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1 321. Defendants' use of Pinder's image, likeness, and/or identity constitutes a false
2 designation of the source of origin, sponsorship, approval, or association, which has deceived
3 Pinder's fans, and present and prospective clients, into believing that Crazy Horse
4 advertisements are endorsed by Pinder, or sponsored, approved or associated with Pinder.

5 322. Despite the fact that Defendants was at all times aware that Pinder neither worked
6 at, nor endorsed their strip club, nevertheless, they used Pinder's image in order to mislead
7 potential customers as to Pinder's employment at and/or affiliation with Crazy Horse.
8

9 323. Defendants knew that their use of Pinder's image would cause consumer
10 confusion as to Pinder's sponsorship and/or employment at Crazy Horse.

11 324. Upon information and belief, Defendants' use of Pinder's image did in fact cause
12 consumer confusion as to Pinder's employment at and/or endorsement of Defendants'
13 businesses, and the goods and services provided by Defendants.
14

15 325. As a direct and proximate result of Defendants' actions, Pinder has no control
16 over the nature and quality of the line of products or services provided by Defendants, the nature
17 of the advertisements depicting Pinder's image, likeness, and/or identity, or how Pinder's image,
18 likeness, and/or identity is being depicted by Defendants.

19 326. Further, any failure, neglect or default by Defendants will reflect adversely on
20 Pinder as the believed source of origin, sponsorship, approval, or association thereof, hampering
21 efforts by Pinder to continue to protect her reputation for high quality professional modeling,
22 resulting in loss of sales thereof and the considerable expenditures to promote her personal
23 modeling services to legitimate mainstream media, all to the irreparable harm of Pinder.
24

25 327. Due to Defendants' unauthorized use of Pinder's image, Pinder has been damaged
26 in an amount to be determined at trial.

27 ///
28

1 **WHEREFORE**, Pinder respectfully requests that the Court enter a judgment against
 2 Defendants' and grant actual or compensatory damages in an amount to be determined at trial,
 3 lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use,
 4 attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that
 5 is just and proper.
 6

7 **PINDER COUNT III**
 8 **(Violation of Nevada's Right of Publicity Statute – NRS 597.810)**

9 328. Pinder re-alleges paragraphs 1 – 21, 25, 27 – 52, and 86 – 96 above, and
 10 incorporates the same by reference as though fully set forth herein.

11 329. Pinder has a right of publicity under Nevada's Right of Publicity statute—NRS
 12 597.810.

13 330. Defendants may not use the name, voice, signature, photograph or likeness of
 14 Pinder for any commercial use without first having obtained her written consent for that use.

15 331. As set forth herein, Defendants have violated Pinder's right to publicity by
 16 invading Pinder's privacy, misappropriating her likeness, and publishing on Defendants' social
 17 media outlets and/or website, the altered image, likeness, and/or identity of Pinder, as it appears
 18 in **Exhibit D**, which made it appear as though Pinder was employed at Crazy Horse, or endorsed
 19 Defendants' strip club, or any Crazy Horse events or activities.
 20

21 332. Defendants' unauthorized use of Pinder's image and likeness was continuous and
 22 ongoing in that it was never removed after it was initially posted by Defendants; further, the
 23 manner in which Defendants used the subject image was ongoing and continuous in that any
 24 person visiting Defendants' Facebook account could view, access, and even download the image
 25 from the date it was first posted until present.
 26

27 333. Pinder is informed and believes and herein alleges that Defendants posted and
 28 publicized her image and likeness in a manner that was hidden, inherently undiscoverable, or

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1 inherently unknowable, in that Defendants published her image and likeness on social media
2 threads that, over time, are (for example, but not limited to) “pushed” down in time from
3 immediate visibility.

4 334. Pinder is further informed and believes and herein alleges that discovery will
5 prove that Defendants’ republicized Pinder’s image and likeness on various occasions, via
6 different mediums, after the initial date of the posting of her image and likeness (March 20,
7 2015) and through the filing of this complaint.

8 335. Pinder is informed and believes and herein alleges that Defendants’ republication
9 of Pinder’s image and likeness was altered so as to reach a new audience and/or promote a
10 different product.

11 336. Despite the clear language of NRS 597.810, and at all relevant times, Defendants
12 published, printed, displayed, and/or publicly used Pinder’s image, likeness, and/or identity on
13 their social media outlets, among others, for purposes of trade and/or commercial advertising
14 including, but not limited to, promoting, advertising, and marketing Crazy Horse and/or Crazy
15 Horse events and activities.

16 337. The respective social media outlets were designed to attract business and generate
17 revenue for Crazy Horse.

18 338. Upon information and belief, Defendants’ use of Pinder’s image, likeness and/or
19 identity did in fact attract clientele and generate business for Crazy Horse.

20 339. At all relevant times and at no point, did Defendants ever receive permission or
21 consent, be it written or otherwise, to use Pinder’s image, likeness, and/or identity on Crazy
22 Horse social media outlets or for any other use or matter associated with Crazy Horse.

23 340. Defendants took these actions without Pinder’s permission, consent or authority,
24 be it written or otherwise. In fact, Defendants never sought permission nor authority to use
25

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1 Pinder's image, likeness and/or identity to advertise, promote, market or endorse Defendants'
2 businesses, Crazy Horse or any Crazy Horse event or activities or for any other use.

3 341. Pinder never consented to, permitted, assigned, licensed, or otherwise agreed to
4 Defendants' use of her image, likeness and/or identity to advertise, promote, market or endorse
5 Defendants' businesses, Crazy Horse or any Crazy Horse event or activity.

6 342. Defendants was at all relevant times aware that they never received Pinder's
7 permission or consent to use her Image on any website or social media account, or on any other
8 medium, in order to promote Crazy Horse.

9 343. At no point did Defendants ever compensate Pinder for their use of her image,
10 likeness, and/or identity.

11 344. No applicable privilege or authorization exists for Defendants' use of Pinder's
12 Image.

13 345. Defendants intentionally or, at a minimum, recklessly, published, printed,
14 displayed, or otherwise publicly disseminated or used Pinder's image, likeness, and/or identity
15 without her express written or oral consent, for purposes of trade or for other commercial or
16 advertising purposes as detailed in this Complaint.

17 346. Defendants caused irreparable harm to Pinder, her reputation, and brand by
18 attributing to Pinder the strip club lifestyle and activities at Crazy Horse.

19 347. Defendants have also damaged Pinder as a direct and proximate result of their
20 unauthorized use of Pinder's image, likeness, and/or identity without compensating Pinder.

21 348. Due to Defendants' violation of Pinder's rights of privacy and publicity under
22 NRS 597.810, Pinder has been damaged in an amount to be determined at trial, but in all events
23 not less than seventy-five thousand dollars (\$75,000.00), exclusive of punitive and exemplary
24 damages.

349. In addition, Pinder hereby requests an Order permanently enjoining Defendants from violating Pinder's right to privacy and publicity.

350. In addition, Pinder hereby requests an award of punitive damages, in an amount to be determined at trial, due to Defendants knowing and intentional violation of her statutory rights to privacy and publicity.

WHEREFORE, Pinder respectfully requests that the Court issue a judgment against Defendants for all remedies available under a claim of misappropriation including, but not limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds, including Defendants' profits and other relief deemed just and proper by this Court.

PINDER COUNT IV
(Negligence and *Respondeat Superior*)

351. Pinder re-alleges paragraphs 1 – 21, 25, 27 – 52, and 86 – 96 above, and incorporates the same by reference as though fully set forth herein.

352. Pinder is further informed and believes and herein alleges that Defendants maintain or *should have maintained* employee policies and procedures which govern the use of intellectual property, publicity rights, and/or the image and likeness of individuals for promotional and advertising purposes which specifically prevent the *unauthorized and non-consensual use* of intellectual property, publicity rights and/or the image and likeness of individuals for promotional and advertising purposes.

353. Further, Defendants should have maintained, or failed to maintain, policies and procedures to ensure that their promotional and/or advertising materials and campaigns were not deceptive or misleading in their advertising practices.

354. Defendants owed a duty of care to Pinder to ensure that their advertising and promotional materials and practices did not infringe on her property and publicity rights.

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355. Defendants further owed a duty of care to consumers at large to ensure that their promotional and/or advertising materials and campaigns were not deceptive or misleading in their advertising practices.

356. Defendants breached their duty of care to both Pinder and consumers by failing to either adhere to or implement policies and procedures to ensure that the use of intellectual property, publicity rights, and/or the image and likeness of individuals for promotional and advertising purposes were not unauthorized, non-consensual, or false and deceptive.

357. Defendants further failed to enforce or implement the above-stated policies and/or to communicate them to employees, and/or supervise their employees in order to ensure that these policies, along with federal and Nevada law, were not violated. Defendants breached their duty of care to Pinder and consumers by their negligent hiring, screening, retaining, supervising, and/or training of their employees and agents.

358. Defendants' breach was the proximate cause of the harm Pinder suffered when her Image was published without her consent, authorization and done so in a false, misleading, and/or deceptive manner.

359. As a result of Defendants' negligence, Pinder has suffered damages in an amount to be determined at trial, but which in all events are in excess of seventy five thousand dollars (\$75,000), exclusive of punitive and exemplary damages.

***Plaintiff Mariana Davalos' Causes of Action against
Defendants RUSSELL ROAD FOOD AND BEVERAGE, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB; RUSSO FOODS, LLC d/b/a CRAZY HORSE III GENTLEMEN'S
CLUB; and SN INVESTMENT PROPERTIES, LLC d/b/a CRAZY HORSE III
GENTLEMEN'S CLUB***

**DAVALOS COUNT I
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Advertising)**

360. Davalos re-alleges paragraphs 1 – 21, 26, 27 – 52, and 97 – 107 above, and incorporates the same by reference as though fully set forth herein.

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1 361. Section 43 of the Lanham Act, 15 U.S.C. § 1125, *et seq.* applies to Defendants
2 and protects Davalos from the conduct described herein. Specifically, the Lanham Act prohibits
3 a party in commercial advertising and promotion from “misrepresent[ing] the nature,
4 characteristics, qualities or geographic origin of his or her or another person’s goods, services or
5 commercial activities” 15 U.S.C. §1125(a)(1)(B).
6

7 362. Defendants used Davalos’ image, likeness and/or identity as described herein
8 without authority in order to create the perception that Davalos worked at or was otherwise
9 affiliated with Crazy Horse, endorsed Defendants’ businesses and activities, and/or consented to
10 or authorized Defendants to use her image in order to advertise, promote, and market
11 Defendants’ businesses, Crazy Horse, and/or Crazy Horse events and activities.
12

13 363. Defendants’ use of Davalos’ image, likeness and/or identity to advertise, promote
14 and market Defendants’ businesses, Crazy Horse, and/or Crazy Horse events and activities as
15 described in this Complaint was false and misleading.
16

17 364. Defendants’ unauthorized use of Davalos’ image, likeness and/or identity as
18 described in this Complaint constitutes false advertising by suggesting or implying, among other
19 things, that Davalos worked at or was otherwise affiliated with Crazy Horse, endorsed
20 Defendants’ businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or
21 authorized Defendants’ usage of her image in order to advertise, promote, and market
22 Defendants’ businesses or Crazy Horse events and activities and/or that Davalos would
23 participate in or appear at the specific events promoted in the advertisements.
24

25 365. Defendants’ false advertising described above has the capacity or tendency to
26 confuse consumers, including actual and prospective patrons of Crazy Horse, as to the general
27 quality of attendees and participants of Crazy Horse and in their events, as well as specifically
28 whether Davalos worked at or was otherwise affiliated with Crazy Horse, endorsed Defendants’

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1 businesses, Crazy Horse, or Crazy Horse events or activities, or consented to or authorized
2 Defendants' usage of her image in order to advertise, promote, and market Defendants'
3 businesses or Crazy Horse events and activities.

4 366. Upon information and belief, Defendants' false advertising described above did,
5 in fact, deceive and/or cause consumer confusion as to whether Davalos worked at or was
6 otherwise affiliated with Crazy Horse, endorsed Defendants' businesses, Crazy Horse, or Crazy
7 Horse events and activities, or consented to or authorized Defendants' usage of her image in
8 order to advertise, promote, and market Defendants' businesses or Crazy Horse events and
9 activities. Among other things, upon information and belief, such unauthorized use misled and
10 served to entice consumers and prospective consumers to join Crazy Horse, visit Crazy Horse,
11 and participate in events at Crazy Horse and had a material effect and impact on the decision of
12 members and prospective members and participants to join Crazy Horse, visit Crazy Horse, and
13 take part in the events at Crazy Horse.
14

15 367. Defendants' advertisements, promotions and marketing of Crazy Horse and
16 events at Crazy Horse occur in and are targeted to interstate commerce. Specifically, Defendants
17 promotes their businesses and events through interstate promotions and campaigns to target
18 persons from different states throughout the United States. Defendants principally use the World
19 Wide Web, social media, and other vehicles of interstate commerce to advertise, market,
20 promote, and entice or lure membership and attendance at Crazy Horse events.
21

22 368. Defendants' unauthorized use of Davalos' image, likeness and/or identity as
23 described herein was designed to benefit Defendants' businesses interests by, among other
24 things, promoting Crazy Horse and their activities and attracting clientele to Crazy Horse.
25

26 369. Defendants knew or should have known that their unauthorized use of Davalos'
27 image, likeness and/or identity would cause consumer confusion as described in this Complaint.
28

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370. Defendants' unauthorized use of Davalos' image, likeness and/or identity as described herein violates 15 U.S.C. §1125(a) and was wrongful.

371. Defendants' wrongful conduct as described herein was willful.

372. As such, the present case is an exceptional case warranting an award of reasonable attorneys' fees pursuant to 15 U.S.C. § 1117.

373. Defendants had actual or constructive knowledge of the wrongfulness of their conduct, acted with intent to deprive Davalos of a property interest, and further acted with actual or constructive knowledge of the high probability that injury or damage would result to Koren.

374. The method and manner in which Defendants used the image of Davalos further evinces that Defendants was aware of or consciously disregarded the fact that Davalos did not consent to Defendants' use of the image to advertise Defendants' businesses.

375. Defendants had caused irreparable harm to Davalos, her reputation, and brand by attributing to Davalos the strip club lifestyle and activities at Crazy Horse.

376. Defendants' unauthorized use of Davalos' image, likeness, and/or identity directly and proximately caused and continue to cause damage to Davalos in an amount to be determined at trial.

WHEREFORE, Davalos respectfully requests that the Court issue a judgment granting actual or compensatory damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

DAVALOS COUNT II
(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Endorsement)

377. Davalos re-alleges paragraphs 1 – 21, 26, 27 – 52, and 97 – 107 above, and incorporates the same by reference as though fully set forth herein.

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1 378. Section 43 of the Lanham Act, 15 U.S.C. §1125(a)(1)(A) applies to Defendants,
2 and protects Davalos from the conduct described herein

3 379. Defendants used Davalos' image in order to create the false impression with the
4 public that Davalos either worked at Defendants' strip club, or endorsed Defendants' businesses.
5 This was done to promote and attract clientele to Crazy Horse, and thereby generate revenue for
6 Defendants.
7

8 380. Thus, this was done in furtherance of Defendants' commercial benefit.

9 381. Davalos is in the business of commercializing her identity and selling her images
10 to reputable brands and companies for profit. Defendants' customers are the exact demographic
11 that views Davalos' images in magazines and online. By virtue of Davalos' use of her image and
12 identity to build her brand, she has acquired a distinctiveness through secondary meaning.
13 Davalos' image either suggests the basic nature of her product or service, identifies the
14 characteristic of her product or service, or suggests the characteristics of her product or service
15 that requires an effort of the imagination by the consumer in order to be understood as
16 descriptive. As such, her brand – the reason her clients seek to hire her – is unique in that it is
17 encompassed in her identity, i.e., her persona.
18

19 382. Both Davalos and Defendants compete in the entertainment industry, use similar
20 marketing channels, and their respective endeavors overlap. They vie for the same dollars from
21 the same demographic consumer group.
22

23 383. As such, an unauthorized use of Davalos' image to promote a strip club created an
24 undeniable confusion in Defendants' consumers' minds, which lead to competitive injury to
25 Davalos. There is no doubt that Defendants' used Davalos' image for advertising purposes, that
26 is to promote their business enterprises, as such, Defendants' unauthorized and unlawful use of
27

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1 Davalos' image and likeness was an existing intent to commercialize an interest in Davalos'
2 image and likeness.

3 384. Defendants' use of Davalos' image, likeness, and/or identity constitutes a false
4 designation of the source of origin, sponsorship, approval, or association, which has deceived
5 Davalos' fans, and present and prospective clients, into believing that Crazy Horse
6 advertisements are endorsed by Davalos, or sponsored, approved or associated with Davalos.
7

8 385. Despite the fact that Defendants was at all times aware that Davalos neither
9 worked at, nor endorsed their strip club, nevertheless, they used Davalos' image in order to
10 mislead potential customers as to Davalos' employment at and/or affiliation with Crazy Horse.
11

12 386. Defendants knew that their use of Davalos' image would cause consumer
13 confusion as to Davalos' sponsorship and/or employment at Crazy Horse.

14 387. Upon information and belief, Defendants' use of Davalos' image did in fact cause
15 consumer confusion as to Davalos' employment at and/or endorsement of Defendants'
16 businesses, and the goods and services provided by Defendants.

17 388. As a direct and proximate result of Defendants' actions, Davalos has no control
18 over the nature and quality of the line of products or services provided by Defendants, the nature
19 of the advertisements depicting Davalos' image, likeness, and/or identity, or how Davalos'
20 image, likeness, and/or identity is being depicted by Defendants.
21

22 389. Further, any failure, neglect or default by Defendants will reflect adversely on
23 Davalos as the believed source of origin, sponsorship, approval, or association thereof,
24 hampering efforts by Davalos to continue to protect her reputation for high quality professional
25 modeling, resulting in loss of sales thereof and the considerable expenditures to promote her
26 personal modeling services to legitimate mainstream media, all to the irreparable harm of
27 Davalos.
28

390. Due to Defendants' unauthorized use of Davalos' image, Davalos has been damaged in an amount to be determined at trial.

WHEREFORE, Davalos respectfully requests that the Court enter a judgment against Defendants and grant actual or compensatory damages in an amount to be determined at trial, lost profits, disgorgement of profits earned directly or indirectly by Defendants' unlawful use, attorneys' fees and costs, prejudgment and post-judgment interest, and/or such further relief that is just and proper.

DAVALOS COUNT III
(Violation of Nevada's Right of Publicity Statute – NRS 597.810)

391. Davalos re-alleges paragraphs 1 – 21, 26, 27 – 52, and 97 – 107 above, and incorporates the same by reference as though fully set forth herein.

392. Davalos has a right of publicity under Nevada's Right of Publicity statute—NRS 597.810.

393. Defendants may not use the name, voice, signature, photograph or likeness of Davalos for any commercial use without first having obtained her written consent for that use.

394. As set forth herein, Defendants have violated Davalos' right to publicity by invading Davalos' privacy, misappropriating her likeness, and publishing on Defendants' social media outlets and/or website, the altered image, likeness, and/or identity of Davalos, as it appears in **Exhibit E**, which made it appear as though Davalos was employed at Crazy Horse, or endorsed Defendants' strip club, or any Crazy Horse events or activities.

395. Defendants' unauthorized use of Davalos' image and likeness was continuous and ongoing in that it was never removed after it was initially posted by Defendants; further, the manner in which Defendants used the subject image was ongoing and continuous in that any person visiting Defendants' Facebook account could view, access, and even download the image from the date it was first posted until present.

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1 396. Davalos is informed and believes and herein alleges that Defendants posted and
2 publicized her image and likeness in a manner that was hidden, inherently undiscoverable, or
3 inherently unknowable, in that Defendants published her image and likeness on social media
4 threads that, over time, are (for example, but not limited to) “pushed” down in time from
5 immediate visibility.

6
7 397. Davalos is further informed and believes and herein alleges that discovery will
8 prove that Defendants’ republicized Davalos’ image and likeness on various occasions, via
9 different mediums, after the initial date of the posting of her image and likeness (November 2,
10 2015) and through the filing of this complaint.

11 398. Davalos is informed and believes and herein alleges that Defendants’
12 republication of Davalos’ image and likeness was altered so as to reach a new audience and/or
13 promote a different product.

14 399. Despite the clear language of NRS 597.810, and at all relevant times, Defendants
15 published, printed, displayed, and/or publicly used Davalos’ image, likeness, and/or identity on
16 their social media outlets, among others, for purposes of trade and/or commercial advertising
17 including, but not limited to, promoting, advertising, and marketing Crazy Horse and/or Crazy
18 Horse events and activities.

19
20 400. The respective social media outlets and website were designed to attract business
21 and generate revenue for Crazy Horse.

22
23 401. Upon information and belief, Defendants’ use of Davalos’ image, likeness and/or
24 identity did in fact attract clientele and generate business for Crazy Horse.

25 402. At all relevant times and at no point, did Defendants ever receive permission or
26 consent, be it written or otherwise, to use Davalos’ image, likeness, and/or identity on the Crazy
27 Horse social media outlets or for any other use or matter associated with Crazy Horse.
28

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1 403. Defendants took these actions without Davalos' permission, consent or authority,
2 be it written or otherwise. In fact, Defendants never sought permission nor authority to use
3 Davalos' image, likeness and/or identity to advertise, promote, market or endorse Defendants'
4 businesses, Crazy Horse or any Crazy Horse event or activities or for any other use.

5 404. Davalos never consented to, permitted, assigned, licensed, or otherwise agreed to
6 Defendants' use of her image, likeness and/or identity to advertise, promote, market or endorse
7 Defendants' businesses, Crazy Horse or any Crazy Horse event or activity.

8 405. Defendants was at all relevant times aware that they never received Davalos'
9 permission or consent to use her Image on any website or social media account, or on any other
10 medium, in order to promote Crazy Horse.

11 406. At no point did Defendants ever compensate Davalos for their use of her image,
12 likeness, and/or identity.

13 407. No applicable privilege or authorization exists for Defendants' use of Davalos'
14 Image.

15 408. Defendants intentionally or, at a minimum, recklessly, published, printed,
16 displayed, or otherwise publicly disseminated or used Davalos' image, likeness, and/or identity
17 without her express written or oral consent, for purposes of trade or for other commercial or
18 advertising purposes as detailed in this Complaint.

19 409. Defendants caused irreparable harm to Davalos, her reputation, and brand by
20 attributing to Davalos the strip club lifestyle and activities at Crazy Horse.

21 410. Defendants have also damaged Davalos as a direct and proximate result of their
22 unauthorized use of Davalos' image, likeness, and/or identity without compensating Davalos.

23 411. Due to Defendants' violation of Davalos' rights of privacy and publicity under
24 NRS 597.810, Davalos has been damaged in an amount to be determined at trial, but in all events
25
26
27
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1 not less than seventy-five thousand dollars (\$75,000.00), exclusive of punitive and exemplary
2 damages.

3 412. In addition, Davalos hereby requests an Order permanently enjoining Defendants
4 from violating Davalos' right to privacy and publicity.

5 413. In addition, Davalos hereby requests an award of punitive damages, in an amount
6 to be determined at trial, due to Defendants knowing and intentional violation of her statutory
7 rights to privacy and publicity.

8 **WHEREFORE**, Davalos respectfully requests that the Court issue a judgment against
9 Defendants for all remedies available under a claim of misappropriation including, but not
10 limited to, actual damages, costs, interest, and restitution of Defendants' unlawful proceeds,
11 including Defendants' profits and other relief deemed just and proper by this Court.

12 **DAVALOS COUNT IV**
13 **(Negligence and *Respondeat Superior*)**

14 414. Davalos re-alleges paragraphs 1 – 21, 26, 27 – 52, and 97 – 107 above, and
15 incorporates the same by reference as though fully set forth herein.

16 415. Davalos is further informed and believes and herein alleges that Defendants
17 maintain or *should have maintained* employee policies and procedures which govern the use of
18 intellectual property, publicity rights, and/or the image and likeness of individuals for
19 promotional and advertising purposes which specifically prevent the *unauthorized and non-*
20 *consensual use* of intellectual property, publicity rights and/or the image and likeness of
21 individuals for promotional and advertising purposes.

22 416. Further, Defendants should have maintained, or failed to maintain, policies and
23 procedures to ensure that their promotional and/or advertising materials and campaigns were not
24 deceptive or misleading in their advertising practices.

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1 417. Defendants owed a duty of care to Davalos to ensure that their advertising and
2 promotional materials and practices did not infringe on her property and publicity rights.

3 418. Defendants further owed a duty of care to consumers at large to ensure that their
4 promotional and/or advertising materials and campaigns were not deceptive or misleading in
5 their advertising practices.
6

7 419. Defendants breached their duty of care to both Davalos and consumers by failing
8 to either adhere to or implement policies and procedures to ensure that the use of intellectual
9 property, publicity rights, and/or the image and likeness of individuals for promotional and
10 advertising purposes were not unauthorized, non-consensual, or false and deceptive.

11 420. Defendants further failed to enforce or implement the above-stated policies and/or
12 to communicate them to employees, and/or supervise their employees in order to ensure that
13 these policies, along with federal and Nevada law, were not violated. Defendants breached their
14 duty of care to Davalos and consumers by their negligent hiring, screening, retaining,
15 supervising, and/or training of their employees and agents.
16

17 421. Defendants' breach was the proximate cause of the harm Davalos suffered when
18 her Image was published without her consent, authorization and done so in a false, misleading,
19 and/or deceptive manner.
20

21 422. As a result of Defendants' negligence, Davalos has suffered damages in an
22 amount to be determined at trial, but which in all events are in excess of seventy five thousand
23 dollars (\$75,000), exclusive of punitive and exemplary damages.

24 **DEMAND FOR JURY TRIAL**

25 423. Plaintiffs demand a trial by jury.

26 ///

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28

PRAYER FOR RELIEF

WHEREFORE, each Plaintiff individually respectfully prays that this Court grant Judgment to each Plaintiff, respectively, and against Defendants, jointly and severally, in an amount to be determined at trial aggregated across all Plaintiffs and as follows:

1. For damages as provided in 15 U.S.C. § 1125(a);
2. For attorneys' fees and costs of suit, as provided for in 15 U.S.C. § 1117;
3. For an order permanently enjoining Defendants from using Plaintiffs' Images to promote the Club;
4. For actual damages according to proof;
5. For general damages according to proof;
6. For special damages according to proof;
7. For consequential damages according to proof;
8. For reasonable attorneys' fees and costs as permitted by law;
9. For prejudgment interest and royalties at the legal rate;
10. For such other relief as this Court deems just and proper; and
11. For punitive damages, in an amount to be determined at trial.

DATED this 24th day of June, 2019.

ALVERSON TAYLOR & SANDERS

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